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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF ISLAND

In the Matter of the)	Case No: 05-4-00151-0
Guardianship of:)	
)	FINDINGS OF FACT & CONCLUSIONS
EMMA ENDICOTT,)	OF LAW
)	
An Alleged Incapacitated)	
Person.)	
_____)	

This matter came before the court for trial for ten days, on December 13 through the 15th of 2005, and January 4th and 5th, February 22nd, 23rd, 27th, and 28th, and March 1st of 2006. The Petitioners, Ronald ("Ron") and Donald ("Don") Endicott filed this action on July 11, 2005. Under the guardianship statute, ch. 11.88 RCW, Petitioners seek to establish a guardianship of the person and of the estate of their mother, Emma Endicott. Under ch. 74.34 RCW, Petitioners seek protection for their mother based on their claim that she is a vulnerable adult who has been exploited through undue influence by Robert ("Bob") and Samantha Saul and Vernon and Linda Gabelein.

FINDINGS OF FACT &
CONCLUSIONS OF LAW
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2 Petitioners also seek to rescind a real estate transaction between Ms. Endicott and
3 the Sauls and the Gabeleins. The court issued a temporary order on August 19, 2005,
4 which the court has thereafter periodically extended so as to maintain the status quo by
5 prohibiting any further transfers of property until the guardianship matter could be
6 resolved. On December 13, 2005, the court entered an order granting a motion made by
7 Ms. Endicott on November 9, 2005, and by the Sauls and Gabeleins on November 20,
8 2005, to bifurcate the claims to rescind the real estate transaction.
9

10 Petitioners were represented by Carolyn Cliff. Ms. Endicott was represented by
11 H. Clarke Harvey, of Kelly, Harvey & Carbone. The Sauls and the Gabeleins were
12 represented by John Demco, of the Demco Law Firm.

13 A list of the witnesses who testified at trial is attached as Exhibit A hereto. Janice
14 Edwards, Chris McCarthy, Debbie Page, and [REDACTED] the guardian ad litem,
15 who also testified at the request of Petitioners) were called to testify by Ms. Endicott. Joe
16 Elia, Marcia Guerin, Les Wahl, and Barbara Mearing were called to testify by the Sauls
17 and Gabeleins. The remainder of the witnesses on Exhibit A were called to testify at the
18 request of Petitioners.
19

20 A list of exhibits, presented in numerical order and classified as having been
21 marked for identification by Petitioners, on the one hand, or by Ms. Endicott or the Sauls
22 and the Gabeleins, on the other, is attached hereto as Exhibit B. Exhibits marked with an
23 "A" in the status column were admitted; exhibits marked with an "R" were rejected;
24 exhibits not marked with either were not offered.
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2 For purposes of these Findings and Conclusion, the court will refer to some of the
3 parties by first names, so as to differentiate between various persons who have the same
4 last name. Headings are included for ease of reference, but the court has relied on all of
5 the findings in reaching its conclusions of law.

6 FINDINGS OF FACT

7 A. Introduction

8
9 1. Emma Endicott is age 79. She was married to Orvel (known as "Shorty")
10 Endicott for over 43 years. Shorty died on November 7, 1998.

11 2. Before her marriage to Shorty, Emma had two children from a prior
12 marriage, John Earl ("Earl") Fisher and Robert ("Bob") Fisher. Emma and Shorty had
13 twin sons, Ron and Don, who are the petitioners in this case.

14 3. Until June 17, 2005, the twins lived for most of their lives with Emma, in
15 the family home. Bob Fisher and his wife, Sandy, live nearby, in a house built by
16 Emma's father. Until June 17, 2005, Emma had been estranged from Bob and Sandy for
17 years. Earl Fisher, Emma's eldest son, and his family live in Seattle.

18
19 4. Emma has spent most of her life living quietly in the family home, which
20 is in a small neighborhood overlooking scenic views of Mutiny Bay, on Whidbey Island.
21 Emma has never had a driver's license, or a checking account, or a credit card. Emma
22 had a phone years ago when a relative died and left her a phone, but she discontinued the
23 service after a year and has not had a phone since that time until after these proceedings
24 began.
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2 5. Shorty inherited 24 acres of property overlooking Mutiny Bay from his
3 family in 1947. Emma inherited five acres and a 1/3rd interest in her parents' house, both
4 located in the same general neighborhood, in 1976. On December 21, 1972, Emma and
5 Shorty signed a community property agreement.¹ Although the existence of the
6 community property agreement was not generally known, Emma inherited the family
7 acreage outright after Shorty's death in 1998.

8
9 6. While Shorty was alive, he managed the family finances, making all of the
10 financial decisions. While Shorty was alive, he kept a tight fist over what was bought,
11 even tracking the amount of groceries bought by Emma. After his death, Emma took
12 over managing the family finances and the property.

13 7. After Shorty's death, Emma relied principally on the twins, who lived
14 with her, but also and increasingly on Vernon and Linda and on Bob and Samantha, the
15 respondents in the vulnerable adult claims. Emma is related by marriage to the
16 respondents. Emma's brother, John Ohm, is married to Vernon Gabelein's sister, Ruth
17 Gabelein Ohm. Samantha ("Sam") Saul, daughter of Vernon's wife, Linda Gabelein, is
18 married to Bob Saul, a long-time friend of the twins since grade school. Dina Thompson
19 is Sam's sister and Linda's daughter. Emma executed a durable power of attorney on
20 June 9, 2003, making Samantha her attorney in fact.² The durable power was effective
21 immediately.
22
23

24
25 ¹ Exhibit 15.

² Exhibit 59.

1
2 8. Emma is an extremely frugal person. Emma has described herself as
3 "tight as a tick". Emma picked up cans from dumps for years so that she could send in
4 the labels to the manufacturers to get cash rebates. Emma sold produce raised on the
5 family acreage from a stand there to get money to buy school clothes for her sons. Emma
6 wears second-hand clothes given to her by neighbors and friends rather than waste money
7 buying new clothes for herself. Emma did not replace her dentures, which she bought in
8 1951, until late October of 2005,³ after these proceedings were filed and in anticipation of
9 the trial; although they were broken long before that, she had Don keep gluing the pieces
10 together because she did not want to spend the money to buy new ones.
11

12 9. After Shorty's death, Emma's assets consisted of \$556.13 a month from
13 her husband's pension, community funds in a savings account, and the property. Ms.
14 Endicott relied on the funds left after Shorty died to pay large bills such as the property
15 taxes. The court does not credit Emma's testimony that she had no money when Shorty
16 died. Ron Endicott testified that there was \$114,000 in community funds when Shorty
17 died, and Emma had still had more than \$60,000 on deposit in the bank in May of 2002,
18 not counting the proceeds from the property sales described below.⁴
19

20 10. While Shorty was alive, neither Shorty nor Emma sold any of their
21 property. While Shorty was alive, neither Shorty nor Emma ever gave away any of their
22

23 ³ Exhibit 81.

24 ⁴ According to Emma's bank account register, Exhibit 49, she had at least \$185,374.42 on deposit in the
25 bank as of May 7, 2002: \$174,054 in her savings account, \$5,387.62 in one certificate of deposit, and
26 \$5,932.80 in a second certificate of deposit. Eighty thousand of these funds represents the proceeds from
Emma's sale to the Sauls, in February of 2002; \$45,000 represents the net proceeds from Emma's sale to
Samantha's sister, in October of 2001. The rest – approximately \$60,000 – was what was left from the
community funds that Emma received when Shorty died.

1
2 property: with one exception. In 1997, the year before Shorty died, Emma gave her
3 favorite sister, Annie Smiley, her 1/3rd interest in their parents' home.⁵ But since
4 Shorty's death, Emma has sold 15 acres of property, in 3 separate transactions, at below
5 market value. Emma sold the property to the Sauls, to the Gabeleins, and to the
6 Thompsons, all of whom are members of the same family.

7
8 11. Before June 16, 2005, Emma had not been to see a doctor for at least 30
9 years. On June 14, 2005, Emma became confused and fell. The twins went to Bob and
10 Sandy's house to call 911, for emergency aid. When the paramedics arrived, Emma
11 refused medical aid and went to bed. Sometime during the night of the following day,
12 Emma fell out of her bed. On the morning of June 16, 2005, the twins found Emma on
13 the floor under her bed and took her to the emergency room at Whidbey General
14 Hospital. After a series of events described in detail below, Adult Protective Services
15 was called on June 17, 2005, and Emma got restraining orders against the twins, who
16 were as a result removed from the family home. Shortly thereafter, the twins filed this
17 action.
18

19 B. Guardianship of the Estate; Vulnerable Adult

20 12. Emma was devastated by her husband's death, as could be expected after a
21 43-year marriage. Friends and family describe Emma as lonely and grieving.

22 13. In September of 2001, almost three years after her husband's death, Emma
23 sold the five acres that she had received from her parents in 1976. It was generally
24

25 ⁵ Exhibit 66.

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2 understood in the family that the property that Emma had inherited from her parents
3 would go to her older sons, Earl and Bob Fisher. But Emma decided to sell this five
4 acres after Earl and Bob had difficulties over the property's finances and were unable to
5 agree how to split it up.

6 14. When Emma decided to sell this property, she first put up a "for sale by
7 owner" sign. When it did not sell, she asked Samantha Saul, who had just gotten her real
8 estate license, to list the property for sale. Samantha listed the five acres for sale on May
9 23, 2001, for \$69,500,⁶ even though the property's assessed value was \$82,326 in 2001.⁷
10 After eight weeks on the market, the price was lowered to \$64,500, on July 20, 2001.⁸
11 On September 10, 2001, Samantha's sister and brother-in-law, Dina and Mark
12 Thompson, made an offer to buy the property for \$52,000.⁹ Samantha acted as a dual
13 agent for Emma and for her sister and brother-in-law. Emma accepted the offer, which
14 closed on October 2, 2001.¹⁰ Emma received about \$45,000 net from the sale.

15
16
17 15. Samantha testified that Emma had her lower the listing price to \$64,500.
18 The court finds, however, that Emma was dependent on Samantha's advice in real estate
19 matters. Samantha maintains that the seller put the price on the property, but Emma had
20 no realistic knowledge of the real estate market. The property had been on the open
21 market for 3 ½ months when the Thompson made their offer. The court credits the
22

23 ⁶ Exhibit 67.

24 ⁷ Exhibit 4.

25 ⁸ Exhibit 100.

26 ⁹ Exhibit 69, Exhibit 100.

¹⁰ Exhibit 3.

1 testimony of Edgar Wooten, a real estate appraiser for 21 years, that a marketing time of
2 4 to 6 months in 2001 would not have been an usually long marketing time.

3
4 16. Samantha testified that she did not suggest a price to her sister when the
5 Thompsons made an offer. The court does not find that testimony credible, especially in
6 light of all of the information about Emma's later sales, to Samantha herself and to
7 Samantha's parents. Samantha's sister offered \$52,000 for property that was listed for
8 \$64,500 and assessed at \$82,326 and that had been on the market for only a short time by
9 2001 standards. Two years later, in 2003, the assessed value on the "land" portion of this
10 property, by then owned by the Thompsons, was \$110,400.¹¹ The court finds that
11 Emma's sale to the Thompsons was not an arm's length transaction, despite the
12 disclosures in the sale agreement.
13

14 17. Four months after her sister's purchase, Samantha asked Emma to sell
15 some land to her and her husband. On February of 2002, Emma sold the Sauls five
16 acres.¹² The assessor's value in 2001 for the property that they bought was \$195,524,¹³
17 yet the Sauls bought the property for \$80,000.¹⁴ Samantha testified that Emma wanted to
18 sell this property to her for \$52,000, the same price as her sister got, but that Samantha
19 refused to buy it for the lower price. Samantha asserted before trial that she did not recall
20 who mentioned the \$80,000 sale price that was agreed upon but that it was either Emma
21 or Don; at trial, Samantha testified that she was the one who came up with the \$80,000
22
23

24 ¹¹ Exhibit 5.

25 ¹² Exhibit 7.

26 ¹³ Exhibit 70.

¹⁴ Exhibit 14, Exhibit 44.

1 sale price. Both Ron and Don signed the sales agreement along with Emma, although
2 Ron refused to do so for three months.

3
4 18. Whoever suggested the price, Samantha was aware that neither Emma's
5 son nor Emma herself knew the value of the property. Samantha was in a much better
6 position to advise Emma as to the fair market value of the property. Samantha hides
7 behind her disclosure in the sale agreement that the property was assessed at \$195,524.¹⁵
8 While that disclosure is at least a step in the right direction, Samantha was aware that she
9 had a great deal of influence over Emma. Shortly after the Sauls bought this property,
10 Samantha told Ray Lotto, a long-time neighbor who had expressed an interest in buying
11 the remainder of Emma's property, that she was working on Emma, by being nice to her
12 and taking her on trips to Costco, so that she could get a listing on Emma's property that
13 Lotto wanted to buy.
14

15 19. Samantha asserts that she believed that \$80,000 was, "in the range of what
16 was reasonable." However, just two years after the Sauls bought this property, they
17 applied for a home construction loan, in July of 2004. In their application, they told the
18 bank that the property was worth \$400,000.¹⁶ At that time, they had put only \$40,000 to
19 \$100,000 in improvements into the property, which would leave a land value between
20 \$300,000 and \$360,000. A bank appraisal on July 27, 2004, verified that the property
21 had a marine-mountain view and was worth \$400,000.¹⁷ Even if the Sauls had put
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23

24 ¹⁵ Exhibit 6.

25 ¹⁶ Exhibit 55.

26 ¹⁷ Exhibit 56.

1
2 \$40,000 to \$100,000 in improvements into the property, that still would not account for
3 the substantially greater value of the property that they bought from Emma for \$80,000
4 just two years before. Nonetheless, no one has asked for rescission of the 2002 sale to
5 the Sauls or the 2001 sale to the Thompsons.

6 20. Shortly after Emma's sale to her daughter, Samantha, Linda Gabelein,
7 who is also a real estate agent, approached Emma and asked her to sell the five-acre
8 parcel next to Samantha's property¹⁸ to Linda and her husband. Emma said that she had
9 already promised it to someone else. Either Linda or Emma started talking about the
10 Gabeleins buying a different five acres, part of Emma's homestead. Linda and Vernon
11 Gabelein have asserted that Emma kept asking them to buy the property for a full year
12 before they finally decided to take her up on their offer. However, Vernon also testified
13 that they decided to purchase Emma's property shortly after a conversation witnessed by
14 Les Wahl, Vernon's cousin. Les Wahl testified that this conversation occurred around
15 tax time in April or May, shortly after the Sauls bought their property in 2002. Based on
16 Les Wahl's timeline, the court finds that the Gabeleins more than likely began the
17 process of buying property from Emma not long after Samantha's purchase, although
18 they did not sign a purchase agreement until much later, in June of 2004.
19
20

21 21. Linda Gabelein said that Emma offered to sell them this five acres for
22 \$80,000, the same price that their daughter Samantha had paid. Linda said that she told
23 Emma that was ridiculous, that it was too low. Linda said that she could not remember
24

25 ¹⁸ Exhibit 57, Exhibit 20. Assessor's parcel number is R22922-508-3620.

1 who came up with the price but that they settled on a price of \$150,000 net of costs. This
2 five acres has been described, and the court credits the description, as some of the best
3 view property on Whidbey Island.
4

5 22. It was also after the Sauls bought their property that Ray Lotto talked to
6 Samantha and told her that, if she could get Emma to list the rest of her property, he
7 would be willing to pay \$1.5 million for it and give Emma a life estate in her family
8 residence. Every time Lotto asked Samantha how she was doing getting Emma to list her
9 property, Samantha would assure him that she was working on it. Lotto recalls Samantha
10 telling him that, with enough time, that she would be able to get Emma's property for
11 him. Instead, in June of 2004, Samantha helped Barbara Mearing, the real estate broker
12 at the office where both Samantha and Linda work, write up an offer, which Emma
13 accepted, for Samantha's mother to buy five acres of Emma's property for \$150,000 net
14 of costs.¹⁹ Although Samantha disputes portions of it, the court credits Lotto's testimony.
15

16 23. The five acres that Emma sold for \$150,000 net of costs was part of her
17 homestead, 13.77 acres²⁰ that was assessed in 2004 for \$413,864.²¹ After the boundary
18 line adjustment, Emma was left with 8.77 acres, out of which approximately 4.66 acres
19 are swamp and marsh.²²
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24 ¹⁹ Exhibit 74.

²⁰ The property was thought to consist of 14.66 acres, but a survey showed only 13.77 acres.

²¹ Exhibit 72.

²² Exhibit 72.

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24. When Shorty died in November of 1998, Emma owned a total of almost 29 acres of property. After the sale to the Gabeleins, Emma was left with 8.77 acres,²³ where the family home sits, and the five-acre parcel to the north of the property that she sold to Samantha in 2002.²⁴ To the extent that her homestead is still 3.77 acres larger than the five-acre minimum required in the rural zone, Emma may be able to sell the excess to the owner of an adjoining property, such as Frank Robinson, who now owns the property formerly owned by Ray and Janet Lotto²⁵, or to the Sauls and the Gabeleins, who purchased the “diamond-shaped” parcel that adjoins Emma’s homestead property near its northeast corner²⁶ one month after the sale to the Gabeleins closed in May of 2005. But because Emma wants to remain in her family home as long as possible, the only asset that she has left that she can sell freely, to any willing buyer, is the five-acre parcel to the north of the parcel that the Sauls bought in 2002.

25. Within three years of her husband’s death, Emma started selling property that had been in her husband’s family since 1947 and property that had been in her family since sometime long before 1976 and that she had owned since 1976. All of the property was sold to members of the family of Linda and Vernon Gabelein, with Samantha Saul involved in each one. All of the property was sold at bargain prices, below its fair market value.

²³ Exhibit 12.
²⁴ Exhibits 20 and 57. Again, the Assessor’s Parcel number of the five-acre parcel that Emma still owns is R22922-508-3620.
²⁵ Exhibit 20, Assessor’s Parcel Number R22922-492-2220.
²⁶ Exhibit 20, “Tract F, Mutiny Bay Manor”.

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2 26. Linda testified at trial that she always knew that the property that she and
3 Vernon bought needed to be appraised in order to determine its fair market value. But
4 Linda did not get the property appraised until after her purchase, after the guardianship
5 action was filed and, even then, only after the petitioners had an appraisal done. The
6 Gabeleins' appraiser, Joseph Elia, valued the five acres that Vernon and Linda bought at
7 \$260,000 as of June 13, 2004.²⁷ The Endicotts' appraiser, Ed Wooten, valued the five
8 acres at \$324,000 as of June 15, 2004, and at \$427,000 as of May 16, 2005, the date that
9 the sale finally closed.²⁸
10

11 27. The court finds the Endicotts' appraisal to be more credible. All of the
12 comparables chosen by the Gabeleins' appraiser sold for less than the estimated value of
13 the subject property, so there was little, if any, bracketing. The Gabeleins' appraiser had
14 to make greater adjustments to bring the comparables up to the features of the subject
15 property. With the exception of one property, the Gabelein comparables are nine to
16 fourteen months old. In contrast, the Endicott comparables were within two to six
17 months of the date that the Gabeleins signed the purchase agreement. Using older sales
18 does not take into consideration the rapid market appreciation that all the real estate
19 professionals agree has occurred within the last few years. The comparables in the
20 Endicott appraisal are similar in features, view amenities, location, and date of sale. The
21 court finds that the subject property was worth \$324,00 as of June 15, 2004, and
22 \$427,000 as of May 16, 2005.
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25 ²⁷ Exhibit 63.

26 ²⁸ Exhibit 52.

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2 28. Like Samantha, the Gabeleins believe that the \$150,000 sale price was
3 “within the range of what was reasonable.” Linda said that the comparables that she ran
4 when she made the offer supported the \$150,000 sales price. However, Linda did not
5 save the comparables. Instead, at trial she submitted exhibits of reconstructed market
6 comparables that she said that she found in June of 2004. The comparables submitted by
7 Linda were printed out on December 11, 2005.²⁹ Similarly, Samantha said that she did
8 market comparables for the Thompson sale and for the property that she bought, but she
9 did not save those comparables either. The comparables for the Thompson sale were
10 printed out four years after the fact, on November 22, 2005.³⁰ The comparables for the
11 Saul sale were printed out three years after the fact, on December 6, 2005.³¹ The court
12 finds that the comparables submitted by Linda and Samantha were obviously prepared for
13 purposes of this litigation, and the court has given them little or no weight.
14

15 29. Linda Gabelein’s assertion that the price of the property was reasonable is
16 not credible for another reason. In February of March of 2005, Linda was the listing
17 agent for a small lot in Mutiny Bay Heights that Roger Miller bought for \$150,000.
18 Linda listed the property, which was a one-bedroom, 700-square foot house on a small
19 lot, surrounded by other houses, for \$166,000. Within four months of the Miller sale,
20 Linda Gabelein paid Emma \$150,000 for prime view property in the same neighborhood.
21
22 Linda Gabelein is not credible when she testifies that she thought that \$150,000 net of
23

24 ²⁹ Exhibit 64.

25 ³⁰ Exhibit 32.

26 ³¹ Exhibit 33.

1
2 costs for this much superior property was reasonable. Based on her listing and sale to
3 Roger Miller, Linda was aware that the property was worth much more.

4 30. The court finds that the Gabeleins made an active effort to keep Emma's
5 last property sale a secret from Emma's younger sons and from anyone else who might
6 have objected. Linda insists that the twins knew about Emma selling the property to her
7 and Vernon, but her assertion is not credible. Whenever Linda brought the subject up,
8 she said that the twins continued to tell her that nothing was for sale. Linda said that she
9 knew that the twins would be upset if they knew about the sale. Linda was correct.
10 When the twins learned about the last sale a few weeks after it occurred, they were
11 shocked and angry. They immediately confronted the Sauls and the Gabeleins, which is
12 inconsistent with Linda's assertion that they knew about the sale earlier.

13
14 31. The sale to the Gabeleins was processed as a boundary line adjustment,
15 which also served to keep the transaction private. The Gabeleins originally wrote in the
16 purchase agreement that the property would be short-platted, which would have required
17 public notice being posted on the property. Instead, on September 1, 2004, the parties
18 signed an addendum under which the Gabeleins assigned their interest in the agreement
19 to the Sauls and changed the short-plat provision to a boundary line adjustment.³² The
20 Gabeleins argue that they were only taking the advice of Larry Kwarsick, who did the
21 boundary line adjustment for them. However, Larry Kwarsick states in his letter to the
22 Gabeleins on July 19, 2004, that he suggested a boundary line adjustment as a way to
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25 ³² Exhibit 74, Addendum.
26 FINDINGS OF FACT &
CONCLUSIONS OF LAW
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2 reduce cost and speed up the process.³³ This certainly suggests, and the court finds, that
3 he was asked by the Gabeleins about ways to reduce cost and to speed up the process.

4 32. The Gabeleins maintain that it was Emma who wanted the sale to close
5 fast because she wanted the Gabeleins to live next door to her. If that was the purpose,
6 then the Gabeleins took a circuitous, and expensive, route to accomplish it. The
7 boundary line adjustment took a year. Aside from this lawsuit, the Gabeleins will still
8 have to short plat the property in order to construct a house next to Emma, and a short
9 plat will, supposedly, take a longer amount of time than a boundary line adjustment. If
10 the purpose was to reduce cost, as suggested by Mr. Kwaresick, then it makes no sense to
11 do a boundary line adjustment, followed by the expense of a short plat. Rather, the court
12 is convinced, and the court finds, that the parties wanted to speed up the process, not so
13 that they could quickly begin constructing their house next to Emma as she wanted but so
14 the transaction could be closed before it became public knowledge. A boundary line
15 adjustment does not require public notice; a short plat does.
16
17

18 33. Adding to the secrecy, the Gabeleins had the sale closed in Everett,
19 although their general practice was to have other sales closed on the island. The
20 Gabeleins also had Emma's final documents mailed to Emma's attorney rather than to
21 Emma, and had them mailed to Emma's regular attorney, who was unable to represent
22 Emma as regards the property sale because that attorney was then representing the
23 Gabeleins in a partition action, rather than to the attorney who represented Emma in the
24

25 ³³ Exhibit 17.

1
2 sale transaction. Linda Gabelein characterizes this as an accident, just “my stupid
3 mistake”. If it was a mistake, it is one that she knew about. According to Emma, the
4 mail that is sent from her attorney is forwarded to Linda and Vernon Gabelein, who then
5 give it to Emma.

6 34. During this whole process, the twins were helping the Sauls construct their
7 home on the five-acre parcel purchased by the Sauls in 2002, yet the Sauls never said
8 anything to the twins about the Sauls’ participation in the sale.
9

10 35. All of these actions are indicative to the court of deliberate secrecy on the
11 part of the Gabeleins and also of the Sauls, whose participation was vital to
12 accomplishing the sale without the public notice requirement of a short plat.

13 36. In addition, Sharon Mills, who was Roger Miller’s real estate agent, had a
14 conversation with Linda Gabelein in which Linda told her that she lived on the same
15 street as Roger Miller and was in the process of purchasing land to build her dream
16 house. Linda told Sharon not to tell Roger Miller because the sale was “hush-hush” and
17 Roger Miller was a good friend with Emma’s twins. Linda told Sharon that it was a
18 really good deal, and that they were working out the details. The court credits the
19 testimony of Sharon Mills, and the court finds that it was, indeed, a “really good deal”.
20

21 37. Barbara Mearing, Samantha and Linda’s real estate broker, represented the
22 Gabeleins in their purchase of property from Emma and earned a \$7,500 commission
23 from the sale. Ms. Mearing testified that she was aware that the \$150,000 sale price was
24 low, but “not horribly low”. She also testified that the assessor’s values are not “spot on”
25

1
2 and that sometimes property sells for less or more than the assessed value. She said that
3 it is always hard to estimate value but that she respected the fact that the seller gets to
4 choose the price that he or she wants.

5 38. The court gives Ms. Mearing's testimony little weight. In this case, the
6 seller was a 79-year old widow who receives \$566.13 in retirement income and who has
7 absolutely no idea of property values or financial planning. Further, Ms. Mearing was
8 aware of the trust that Emma placed in Samantha because Samantha had told Ms.
9 Mearing about the durable power of attorney that Emma had given to her. Even though
10 Samantha did not use the durable power, it still reflects the trust that Emma placed, and
11 places, in Samantha. Finally, as to the \$150,000 net price not being "horribly low", Ms.
12 Mearing, who purports to be a competent real estate agent and broker, knew or should
13 have known that the \$150,000 net price was, indeed, "horribly low", as the later
14 appraisals show. The court finds that the \$150,000 net price is not only low but also
15 egregiously low.
16
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18 39. Both the Sauls and the Gabeleins, as well as Ms. Mearing, say that Emma
19 was protected because of the disclosures in the sales agreement and the fact that Emma
20 saw an attorney on two occasions, for 20 to 30 minutes each time, to review the sales
21 agreement: the first time when it was signed and the second when it was assigned to the
22 Sauls. Yet there is no indication that the attorney knew that Samantha Saul had a
23 fiduciary relationship with Emma because of the 2003 durable power of attorney, that
24 Samantha was Linda's daughter, that Emma had sold five acres to Samantha's sister in
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2001 and another five acres to Samantha herself in 2002, both at bargain prices, that the value of the property being sold to the Gabeleins for \$150,000 net of costs was close to \$324,000, that Ray Lotto had offered to buy all of Emma' property for \$1.5 million subject to life estate for Emma, that Frank Robinson had offered to buy the approximately 445-foot long section of Emma's homestead property along the waterfront for \$660,000, or that the boundary line adjustment as ultimately processed left all of the marsh and wetlands in the property retained by Emma. Instead, presumably all that the attorney had to go on was the same testimony that Emma gave in court: i.e., that Emma wanted to sell the property to the Gabeleins, that she gets to set the price, and that she gets to pick her neighbors.

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40. Emma did not have any idea of the value of the property that she sold to the Gabeleins and still does not. When asked at trial about the property that she sold for \$150,000 net and which is now worth not less than \$427,000, Emma scoffed and said, "It's just sand". The attorney who advised her was deprived of information that was essential in providing competent legal advice to Emma.

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41. Emma has testified that she was aware that the property that she sold to the Thompsons was worth more than \$52,000 and that she did not care if she sold it for less than it was worth.³⁴ But what is significant about Emma's statement, that it was all right with her to sell her property for less than it was worth, is that the statement is not consistent with the way that Emma was raised, the way that she raised her family, or with

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³⁴ Exhibit 79, Partial Transcript of Emma Endicott's testimony at a hearing on June 27, 2005.

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2 the way that she has lived and that she lives. The court finds that it is inconsistent that
3 Emma, known to family and friends for saving pennies, would be indifferent to selling
4 her property for thousands less than it was worth.

5 42. According to Emma, she wants to choose her neighbors, and she wants the
6 Sauls and the Gabeleins to live close to her. But both the Sauls and the Gabeleins already
7 owned property in the same neighborhood, close to the property that Emma owned,
8 before any of the sales. The Sauls were already living on their property in the
9 neighborhood when Emma sold property to them. The Gabeleins were not living on their
10 property in the neighborhood when Emma sold property to them, but it was Linda
11 Gabelein's intent to build her "dream home" on the larger property that she already
12 owned, located across the street from Emma's property. The court finds that there was
13 no need for Emma to sell property to the Sauls or to the Gabeleins if she wanted them for
14 neighbors because the Sauls and the Gabeleins were already neighbors.
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16 43. Most importantly, Emma's actions in selling property to the Sauls, the
17 Gabeleins, and the Thompsons for less than the property was worth is not consistent with
18 Emma's pattern of gift-giving. Her sons cannot recall ever receiving gifts from Emma.
19 The only recipient of gifts from Emma in the past was her favorite sister, Annie Smiley.
20 Emma gave Annie Smiley her 1/3rd interest in her parents' home in 1997, before Shorty's
21 death. Five years ago, Emma gave Annie a check for \$75 on Annie's 75th birthday: one
22 dollar for every year of her life. Less than a year later, despite knowing that her real
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2 property was her only significant asset, Emma started selling valuable property, all to
3 members of the same family and all for less than its market value.

4 44. In each of her property sales, Emma thought that the property was worth a
5 substantial amount less than it was. After she sold five acres to the Thompsons, she
6 wanted to sell a substantially more valuable piece of property to the Sauls for the same
7 price. The same thing is true for the Gabelein property: she wanted to sell that property
8 at the same price that the Sauls had paid. Emma has indicated to Dr. Edwards and to the
9 guardian ad litem that she does not care that she sold her property for less than it is worth.
10 In fact, Emma told Dr. Edwards that she was not finished with the sale of her property. If
11 Emma is left to her own devices, the court finds that it is likely that Emma will sell her
12 remaining property at below market value, just as she has done in the past. Yet Emma
13 needs to have sufficient funds if she to remain in her home when it is no longer safe for
14 her to live alone.
15

16 45. The most important thing to Emma is to be able to remain in her own home
17 and not to be put in a nursing home. This is somewhat paradoxical, because Emma, after
18 caring for her own mother in her home for two or so years, finally was forced to put her
19 in a nursing home, where she died in 1982. It is not realistic to expect that any of the
20 Gabeleins, the Sauls, or the Thompsons will move into Emma's house when it becomes
21 unsafe for Emma to live alone. Nevertheless, Emma has not even considered that she
22 will need paid caregivers in order to remain in her family home.
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2 46. The guardian ad litem said several times that she did her investigation
3 keeping in mind Emma's own value system. But the guardian ad litem thought that it
4 was unusual for two 48-year old adults to still be living with their mother. This ignores
5 the fact that Emma's husband lived with his parents for years until they died and that
6 Emma herself had each of her older sons live with her mother, in her mother's house, so
7 that her mother would not be alone. Elsie Ball, Emma's sister, testified that she told
8 Emma years ago that she should kick the twins out of the house and that Emma told her
9 that she needed them at home and that it wasn't any of Elsie's business. Steve Smiley,
10 Emma's brother-in-law, said that Emma told him years ago that she needed Don to stay
11 home and take care of her. It appears, and the court finds, that it would not be unusual in
12 Emma's family for two 48-year old adults to still be living at home with their mother.
13

14 47. In addition to giving away thousands of dollars while selling her property, her
15 only significant asset, Emma has also shown failure to conserve money, contrary to her
16 self-proclaimed ability to be "tighter than a tick". After Samantha bought five acres from
17 Emma in 2002, Samantha was able to get Island County to lower the assessed value of
18 the property to her purchase price. Samantha told Emma that she too should contest the
19 assessed value of the five-acre parcel that Emma still owned, to the north of the parcel
20 that the Sauls bought. Emma did not follow through. At trial, she appeared confused and
21 surprised by this suggestion, as if she had never heard it before.
22

23 48. Emma has claimed, or persons on her behalf have claimed, that one of
24 Emma's reasons for selling her property was to "downsize", to reduce her property taxes.
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2 Prior to Shorty's death, he had claimed a senior citizen property tax exemption on their
3 homestead.³⁵ Once Emma sold the first piece of property to the Thompsons, she lost her
4 senior citizen property tax exemption, on August 29, 2002,³⁶ because her income from
5 the property sale disqualified her from the exemption. Even after being advised in
6 writing by Morrie Parker from Island County's Assessor's Office that Emma would have
7 to reapply to have her senior citizen property tax exemption restored, Emma failed to do
8 that, even though it would have saved her property taxes.³⁷
9

10 49. The taxable value of the property subject to Emma's senior citizen
11 exemption was frozen in 1995.³⁸ After the first sale, the taxable value of Emma's
12 homestead in 2002 was \$456,651, and it has been rising ever since then. Emma could
13 have reapplied for the senior citizen tax exemption in 2003 and gotten the property
14 covered by the exemption returned to the same taxable value of 2001 if her income was
15 under \$30,000. However, because Emma sold property to the Sauls in 2002, she was not
16 qualified to reapply for the senior citizen property tax exemption that year, and thus lost
17 her ability to return to the previous, low frozen taxable amount.³⁹ When her income
18 drops below \$35,000 per year⁴⁰ and she again qualifies for the program, Island County
19 will start out with the current assessed value on the property subject to her exemption at
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22 ³⁵ Exhibit 36.

23 ³⁶ Exhibit 38.

24 ³⁷ Exhibit 38.

25 ³⁸ Exhibit 36.

26 ³⁹ Exhibit 38.

⁴⁰ The new income level is \$35,000, compared to \$30,000 in prior years. Other than income from sales of property, Emma's sole income is \$566.13 per month from Shorty's pension.

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2 the time of her application to determine her tax, because she has now been out of the
3 program for two or more years.⁴¹

4 50. Had Emma gotten proper advice in 2002, she could have put off the sale to
5 the Sauls for a year, while she reapplied for the exemption program. She would then
6 have been eligible to have the previous, lower frozen taxable amount reinstated. The wait
7 would not have harmed the Sauls, because they only became financially able to build a
8 house on the property that they bought from Emma in 2004.⁴² Once the property was
9 sold to the Sauls, Emma would again have lost her exemption, but she could have
10 reapplied within the next year and had the previous, lower frozen taxable amount
11 reinstated once again. Now, even if Emma does reapply, the taxable value of the
12 property eligible for the senior citizen tax exemption will likely be based on a value for
13 her homestead in excess of \$400,000.
14

15 51. Emma also has difficulty in tracking information in the register that she
16 uses for her savings account. Emma relies on tellers at the bank to make entries in her
17 account book, which makes her vulnerable to someone who might take advantage of her.
18 Emma has not written down, or had written down for her, all of her withdrawals, and she
19 is unable to explain why her savings account dropped from \$142,890.71 to \$138,139.40,
20 a difference of \$4,751.31, from January 23, 2004 to August 19, 2004.⁴³ The only large
21 expense that Emma has is for taxes, but she testified that she pays all of her property
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24 ⁴¹ Exhibit 38.

25 ⁴² Exhibit 55.

26 ⁴³ Exhibit 49.

1 taxes at once, as soon as she receives her the property tax bill. According to the entries in
2 her account book, she usually pays the property taxes the first week of March. The only
3 other large expenses that Emma had incurred was for a new roof, but those expenses are
4 noted. Since the withdrawal in question appears to have occurred on August 19, 2004, it
5 conceivably could have been for the boundary line adjustment done by Larry Kwarsick or
6 the survey work done by Thatcher & Morrison at or around this time. However, Linda
7 Gabelein testified that the Gabeleins paid all of the expenses of the sale. Thus, this large
8 withdrawal has not been accounted for.

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11 52. There was also a substantial drop in Emma's savings after May 23, 2005,
12 when the last entry in her account book was \$281,069.12.⁴⁴ After Emma was
13 hospitalized, she changed her account number and began tracking her savings in a
14 different account book. Her opening deposit on September 14, 2005, was \$221,934.25:⁴⁵
15 i.e., a drop of \$59,134.87. Although Emma incurred attorneys' fees during this time,
16 those were paid in the amount of \$16,688.82, to Emma's attorney for the domestic
17 violence protection action, on October 4, 2005, and \$4,000 to Emma's attorney in this
18 action, on October 26, 2005.⁴⁶ \$53,333.33 was withdrawn from Emma's account on June
19 14, 2005, to secure a cashier's check payable to Ron.⁴⁷ Although the twins claim
20 ownership of these funds, they deposited them into the registry of this court shortly after
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24 ⁴⁴ Exhibit 49.

25 ⁴⁵ Exhibit 82.

26 ⁴⁶ Exhibit 80.

⁴⁷ Exhibit 9.

1 they filed this action. But no party has explained or accounted for the \$5,801.54
2 remainder.
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4 53. In addition to having unaccounted withdrawals from her savings, Emma
5 has little understanding of “investments”, which also leaves her vulnerable to others.
6 Emma, 79 at the time of the trial, testified that she put \$80,000 into a 30-year annuity in
7 2002 because “the lady at the bank helped her” choose it. The twins told her that it was
8 not a good investment for someone her age, although Emma did not believe them until
9 she asked Samantha. Samantha then took her to the bank to get the \$80,000 back out of
10 the annuity.
11

12 54. Emma was also unaware that the durable power of attorney that she gave
13 to Samantha was effective immediately. According to Dr. Edwards, Emma thought the
14 power of attorney was effective only if she was unable to care for herself. Although
15 Samantha has used the durable power of attorney that Emma gave to her only once, as
16 further described below, nevertheless, Emma gave Samantha the power to make
17 decisions on her behalf, at any time, and now says that she was unaware that she did so.
18

19 55. Even though Emma has been advised to do so by several persons, among
20 them the guardian ad litem, she still refuses to place her money into more than one bank
21 to avoid having more than \$100,000 on deposit in one financial institution. The fact is
22 that Emma is loyal to the people that she trusts, whether that loyalty is misplaced or not.
23 She has refused to follow advice that is given to her by those outside of the circle of
24 people that she trusts, even something as simply as dividing up her savings so as to have
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1 no more than \$100,000 on deposit in one bank. As of November 4, 2005, Emma had
2 \$198,269.56 in one bank account.⁴⁸
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4 56. Emma chose Samantha to be her attorney in fact and even chose to give
5 her a power of attorney that was effective immediately. When the twins questioned her
6 the prudence of Emma's purchase of a 30-year annuity in 2002, she would not believe
7 that their questions were valid until she had Samantha Saul check out the situation. The
8 same thing occurred when the twins questioned Emma about the lapse in the homeowners
9 insurance. Emma relied on Samantha, even though Samantha gave Emma the same
10 advice that her sons had given.
11

12 57. As for Linda Gabelein, Emma has stated several times to others and to the
13 court that she would give Linda her property if she could. Emma testified that Linda is
14 like a daughter to her, that Linda is her pet, and that she worships Emma. Both Linda and
15 Samantha are aware of the trust that Emma places in them.
16

17 58. Both Samantha and Linda are real estate professionals, yet neither one
18 advised Emma, or did not advise Emma accurately, as to the fair market value about the
19 property that Emma was to sell to each one. Both Samantha and Linda were aware that
20 Emma only receives \$566.13 per month and that Emma was dependent on maximizing
21 her assets in order to continue living in her home, as each knew that Emma wanted to do.
22 Emma relied on Samantha and Linda for her contact with the outside world, because she
23 had no telephone and did not drive.
24

25 ⁴⁸ Exhibit 82.

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2 59. Because the twins are as unsophisticated as Emma, without money or
3 influence, they were not in a position to challenge the advice given to Emma by
4 Samantha and Linda. The twins were as unaware as Emma was about the value of the
5 property, and, in fact, the twins helped to facilitate the first two sales of property.

6 60. The Gabelein transaction would not have occurred without the Sauls'
7 participation in a boundary line adjustment.

8
9 61. When Emma went home from the hospital on June 17, 2005, she went to
10 stay with Bob and Sandy Fisher. After the twins challenged the Sauls and the Gabeleins
11 about the last sale, Vernon Gabelein contacted Sandy Fisher with an offer. Vernon told
12 Sandy that he could talk Emma into giving Bob Fisher and Earl Fisher, Emma's older
13 sons from her first marriage, her remaining five-acre parcel of property, with the implied
14 understanding that they would not oppose the property sale to the Gabeleins. Vernon
15 Gabelein denied that he did this, but the court did not find his denial credible. The court
16 credits the testimony of Earl Fisher, who testified that Sandy Fisher talked to him about
17 this offer back in June of 2005. Sandy told him that Vernon said that he was close to
18 Emma and could get Emma to sign over the five acres.

19
20 62. Sandy Fisher reluctantly testified that she relayed Vernon's offer to Earl
21 Fisher and urged him to cooperate, stating that it was the only possibility that the two
22 older sons would get anything from Emma's estate. Earl Fisher told Sandy Fisher that
23 they needed to think about Emma, not themselves. At trial, Sandy attempted to smooth
24 over her participation in this scheme by saying that she had been greedy but now regrets
25

1 her actions. However, she still supports Emma's right to sell the property to the
2 Gabeleins. The court finds that Sandy Fisher's credibility is sadly lacking.
3

4 63. Sandy Fisher was extremely angry with Emma and the twins when Emma
5 sold the five acres that Emma had received from her mother. This is the same property
6 that the Fishers believed that they would inherit. The court credits the testimony of Ron
7 Endicott, who was present when Sandy learned about the property's sale to the
8 Thompsons. Ron testified that Sandy ordered Emma off her property and threatened to
9 call the police if she did not. At the same time, Sandy told Emma, "I hope you die, old
10 lady." Emma did not speak with Bob Fisher or Sandy Fisher for years after this incident
11 until recently. Sandy verified that she was angry with Emma after the Thompson sale but
12 that they reconciled when Emma went to stay with Bob and Sandy after she left the
13 hospital on June 17, 2005.
14

15 64. Emma is unaware of the market value of the property that she sold and
16 does not even care. The most important thing to Emma is to remain in her home. Emma
17 is unaware of what it will cost should she need long-term care in her home. The guardian
18 ad litem testified that the cost for in-home care would be close to \$6,000 a month at
19 today's prices, without even accounting for inflation in the future. Emma's relatives have
20 lived into their 90's, so Emma could realistically have between 5 to 10 years of costs if
21 she wants to remain in her home.
22

23 65. According to Sandy Fisher, Emma stayed five months at her home, longer
24 than anticipated, after Emma went home from the hospital on June 17, 2005, because
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2 Emma fell in the yard. Emma has apparently been having muscle aches and urinary tract
3 infections within the last few months. Emma does not cook, and relies on others for her
4 meals. Emma returned home on December 1, 2005, shortly before this trial started, but it
5 is not realistic that Emma will be able to remain alone in her home for many more years.
6 It is possible that Bob and Sandy would have Emma live with them, but the court is
7 mindful that Emma was estranged from them for a long period and that they have just
8 recently reconciled.
9

10 66. The guardian ad litem testified that Samantha and Linda have influence
11 over Emma but did not believe that Emma had been unduly influenced by them. The
12 Sauls and the Gabeleins maintain that Emma's interests in the property transactions were
13 safeguarded because of the disclosures in the sale agreements and because Emma went to
14 an attorney twice during the course of the sale to the Gabeleins. They also state that
15 Emma knows her own mind and that, once Emma makes up her mind to a course of
16 action, no one can change it. The court agrees with their assessment that Emma is
17 stubborn, but the court finds that Emma has, in fact, been unduly influenced.
18

19 C. Guardianship of Person

20 67. The court has been very concerned about this case because neither the
21 guardian ad litem's report nor the medical/psychological report from Dr. Janice B.
22 Edwards recommends a guardianship or a limited guardianship for Emma, whether it is
23 of the person or of the estate. Yet the court's observations of Emma during trial are
24 different.
25

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2 68. The court had many opportunities to observe Emma over a lengthy period
3 of time during this trial. The court found Emma to be frail, confused, unsteady,
4 disoriented, childlike, and oftentimes belligerent, from December of 2005 to March of
5 2006, during the ten days of this trial. Emma was forgetful, which is not unusual for a
6 person her age. But Emma's forgetfulness had another element to it. It is not that Emma
7 could not remember something; it is that Emma refused to believe that certain things had
8 happened at all. On other occasions, Emma asserted certain information as if it was the
9 truth when she clearly had no memory of the event.
10

11 69. For instance, shortly before Emma went to the hospital in June of 2005,
12 she had been confused during the day and fell later in the evening. Her sons called 911
13 for assistance, but Emma refused to go to the hospital.⁴⁹ On the morning of June 16th,
14 Don found Emma on the floor, halfway under the bed. Don said that his mother's eyes
15 were glazed, that she was confused, and that she had soiled herself. Emma did not know
16 where she was and kept asking, "How did I get here"? Don and his brother, Ron, told
17 Emma that they were taking her to see Linda and Vernon and then drove her to the
18 emergency room at the hospital.
19

20 70. Emma was disoriented when she was admitted; hospital staff were told
21 that she was found by her sons under the bed and that she explained, "it is warm here."
22 On the morning that she was admitted, Debra Page, a social worker at the hospital, tried
23 to talk to Emma, but Emma could not carry on a conversation, so Ms. Page decided to
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25 ⁴⁹ Exhibit 10.

1 wait until the next morning, on June 17, 2005, to talk with her.⁵⁰ Sometime thereafter,
2 Samantha Saul identified herself to the hospital staff as having a power of attorney from
3 Emma. At 8 a.m. the next morning, Ms. Page called Samantha Saul, who told her that
4 Emma's sons had been abusing her. According to Ms. Page's notes of the conversation,
5 Samantha Saul told Ms. Page that Emma had told Samantha that her sons had hit her:
6 that's why she was in the hospital. At 8:30 a.m., Ms. Page, who is a mandatory reporter,
7 called Adult Protective Services and reported what Samantha had told her. Sometime
8 that morning, Samantha returned to the hospital with her durable power of attorney,
9 talked with Ms. Page, and sat in on the interview that Ms. Page had with Emma.
10

11
12 71. During the interview, Emma would not talk to Ms. Page at first, then
13 started crying and said that the twins yelled at her a lot, were very controlling, and would
14 not let her watch television. Emma never said that her sons hit her. There is no reference
15 in any medical record to bruises or knuckle marks on Emma's face.⁵¹ Further, Emma
16 told Ms. Page that she did not remember what happened that had caused her to be in the
17 hospital. Nonetheless, Emma started a domestic violence protection action that day
18 against her sons; when Emma testified at various hearings as result in the summer of
19 2005, she again testified that she did not remember what had happened that had caused
20 her to be in the hospital. But at trial in February of 2006, Emma was asked if she had
21 fallen out of bed the night before she went to the hospital. In response, Emma said
22 loudly, "WHAT? They knocked me out. I finally came to the next day." She also said
23
24

25 ⁵⁰ Exhibit 51.

26 ⁵¹ See Exhibit 50.

1 that her sons had beat her up that night. This testimony is in stark contrast to Emma's
2 statement to Ms. Page on June 17th: i.e., that her sons yelled at her, were controlling, and
3 wouldn't let her watch television. The court does not find Emma's assertions about the
4 twins beating her up to be credible and does not credit them.
5

6 72. The court is mindful that, since Emma's hospital stay in June of 2005, she
7 has had very limited contact with the twins, who lived with her before June of 2005 (a
8 domestic violence protection order was ultimately dismissed as to Ron but sustained as to
9 Don, based on an incident that occurred about a year before June of 2005, when Don hit
10 Emma with a piece of Styrofoam from a packing crate that held a new refrigerator).
11 Emma stayed with Bob and Sandy Fisher for five months after leaving the hospital before
12 she moved back home on December 1, 2005. Emma now relies on meals brought to her
13 by Sandy Fisher, as well as meals brought by Linda Gabelein, Samantha Saul, and Dina
14 Thompson. Emma has frequent visits with Samantha Saul and with Vernon and Linda.
15 Further, Sandy Fisher admitted that, after Emma told Ron that he and Don could use the
16 smokehouse at the homestead property in the fall of 2005, Sandy told Emma, "They hurt
17 you, so don't let them back so easy." Emma called Ron the next day and told him that
18 she was taking back what she told him yesterday and that he could not use the
19 smokehouse.
20
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22 73. Emma has always done her banking in person by either withdrawing cash
23 or getting money orders or postal orders to pay her bills. Many entries in her savings
24 account book were not in Emma's handwriting, and, as reflected above, the court credits
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2 the guardian ad litem's conclusion that some bank tellers would enter Emma's interest
3 and deposits down for her in her bank register. But when asked about these entries at
4 trial, Emma said that she had not made the entries and that she did not know who had
5 done it. She indicated in her testimony that she was going to get to the bottom of the
6 matter and said, "I'll go over to the bank, and I'll say something. I'm not bashful." She
7 finally indicated, "I don't know anything about it. That's all I can say." Shortly after,
8 when she was asked a question about another matter, Emma went back to the savings
9 book question and worriedly said, "I didn't fill that in. That's got me worried." Yet
10 Emma was present when the entries were made on her behalf.
11

12 74. When she testified at trial, Emma denied that she had listed the property
13 with Samantha Saul that was eventually purchased by the Thompsons. She said, "NO! I
14 didn't list it with Samantha. I listed it myself, for sale as is by owner. I know what I
15 sold!" While Emma did try to sell the Thompson property on her own, she thereafter
16 listed it with Samantha. After being shown the listing agreement that she signed, Emma
17 said maybe she did list the property. Emma then volunteered, "If Sam told you that,
18 that's the truth." When asked if Samantha had told her about Ray Lotto's interest in
19 buying her property for \$1.5 million, Emma denied it, but then added: "No, I'm going to
20 ask Sam that." Emma's answers not only show her confusion about events that she not
21 only witnessed but also that she had heard about in court during the trial, they also show
22 the trust that Emma places in Samantha Saul. As Emma said, if Samantha Saul says it,
23 that's the truth for Emma.
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75. Emma was asked if she remembered Sam telling her, as Sam testified, that Sam got her assessed valuation reduced to \$80,000 after the Sauls purchased Emma's property for that price. Emma could not remember that conversation. When Emma was asked if Sam had advised her that she could get her taxes reduced on her remaining five-acre parcel the same way, she said no. Asked if she had challenged the taxes, Emma said angrily, "NO! It's my choice to sell for \$1 if I want to!" Her answer had no relationship to the question that had been asked.

76. If Emma did not agree with the testimony from other witnesses, she would make faces of astonishment or bafflement, indicating clearly her disagreement with the testimony. She continued to talk in court, at times so loudly that she would have to be reminded by the court to be quiet. In December of 2005, during the testimony of her sister-in-law, Ruth Gabelein Ohm, Emma laughed, smiled, talked, and looked around as if she was at a social gathering. Emma's attorney frequently had to tell her to be quiet. The court understands that a guardianship proceeding is a difficult time for anyone. But Emma's behavior in court was dramatically different from anyone else that the court has observed in ten years on the bench.

77. Apparently, Emma's behavior after she was discharged from the hospital did not present the same concerns. Chris McCarthy, a social worker for Adult Protective Services, interviewed Emma two days after her discharge from the hospital, when Emma was staying with Bob and Sandy Fisher. Ms. McCarthy said Emma answered all her questions appropriately. Her impression was that Emma was knowledgeable about her

1 situation and was able to make choices. She did not believe that Emma needed a
2 guardian and also said that, in her capacity with the Department of Social and Health
3 Services, that she would not apply for a guardian for her.
4

5 78. Dr. Janice Edwards interviewed Emma for two hours on September 30,
6 2005, in Bob and Sandy Fisher's home, with similar results. Emma scored 27 out of 30
7 on a mini mental status exam, well within the normal range. Dr. Edwards found that
8 Emma did not have any mental, emotional, or organic disorder that affected her cognitive
9 or volitional control, or her ability to handle her own affairs.⁵² She said that Emma had
10 slight memory problems, which was not unusual. She said that Emma sold property to
11 the Sauls and the Gabeleins because they were good to her and she wanted them to live
12 next to her. She said that Emma was not interested in spending money, that she values
13 friends and family treating her nicely. She also said that Emma was not interested in
14 selling property to others, even for more money, because Emma did not want her
15 neighborhood built up. Dr. Edwards' impression was that Emma had no impairment to
16 meeting her self-care needs.
17

18
19 79. Dr. Edwards is a forensic psychologist who has done over 100
20 guardianship evaluations. However, the court credits the information elicited during her
21 cross-examination: that she was not aware of much of the evidence provided to the court
22 in this trial. For example, Dr. Edwards was not aware that Emma had not reapplied for
23 her senior citizen tax exemption, that she did not pursue an appeal of her property taxes
24

25 ⁵² Exhibit 45.

1 after Samantha had advised her to do so, that Ms. Endicott had acquired the denture that
2 she was missing during their interview back in 1951 and that it was broken long before
3 their interview, that Emma had not been to a doctor in over 30 years until she was
4 hospitalized in June of 2005, that Emma had no preventative checkups or any well health
5 care until the guardianship petition was filed, that Emma had refused emergency medical
6 care, or that Emma was considered not competent to refuse hospitalization when she was
7 admitted to the hospital in June of 2005.
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10 80. The court has struggled with these opinions because the court has respect
11 for both of these professionals. But Ms. McCarthy's impressions reflect a two-hour visit
12 in mid-June of 2005; Dr. Edwards' impressions reflect a two-hour visit at the end of
13 September of 2005. Their impressions are widely divergent from what the court
14 observed of Emma over a period from December of 2005 through March 2, 1006,
15 through ten days of trial. Even the guardian ad litem, who testified after Emma,
16 acknowledged that if she were looking at Emma solely based on Emma's testimony in
17 court, that she too might have doubts as to whether Emma needed a guardian.
18

19 81. The guardian ad litem believed that Emma's testimony at trial was due to
20 the fact that Emma was tired, scared, angry, upset, and not listening. The guardian ad
21 litem believed that Emma would be viewed differently in her own home setting. Emma's
22 attorney, and the attorney for the Sauls and Gabeleins, also said that Emma was on
23 medication that could be the cause of her behavior in court. On February 8, 2006,
24 Samantha took Emma to the emergency room, where Emma was prescribed antibiotics
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2 for a urinary tract infection, painkiller, and a muscle relaxant. If Emma took two pills a
3 day as prescribed, she would have finished her antibiotics on February 13 or 14, 2006,
4 before her testimony started. Emma went back to the hospital on February 23, 2006, the
5 day after her testimony, for more tests for a suspected urinary tract infection, and the
6 guardian ad litem reported that the results were positive.

7
8 82. The court does not attribute Emma's behavior during trial solely to the
9 urinary tract infection. The court observed Emma's behavior for three full days in
10 December of 2005 and two full days in January of 2006, and her behavior was as
11 described above. There is no suggestion that Emma was suffering from a urinary tract
12 infection then. Even if she was suffering from a urinary tract infection, the antibiotics
13 prescribed for her on February 8, 2006, would have been completed on February 13th or
14 14th. Emma's disorientation cleared up with 24 hours when she was at the hospital in
15 June of 2005 for the same condition. The difference between June of 2005 and February
16 of 2006 is that Emma was no longer living with anyone who monitors whether she was
17 taking her medication. Samantha, who took her to the hospital on February 8th, testified
18 that she did not know if Emma had finished her medication. Because Emma was
19 diagnosed with two urinary tract infections in such a short period of time, the court
20 questions whether she took all of her antibiotics as prescribed.
21

22
23 83. The guardian ad litem also said that she had seen Emma at least ten times
24 in the last seven months, counting times when she would drop by Emma's house. She
25 said that Emma was consistent in the stories that she told her. During court, the guardian

1 ad litem's view was that Emma was just giving answers without thinking them through.
2
3 However, a review of Emma's testimony during the domestic violence hearing in June of
4 2005 shows that her answers then are, in general, consistent with Emma's testimony at
5 trial in February of 2006, with the exception of Emma's memory of what happened the
6 night before she went into the hospital.⁵³

7
8 84. The guardian ad litem has conducted some 40 investigations into
9 guardianship matters, and she has spent more time with Emma than with any other
10 alleged incapacitated person. But the court credits the information elicited on cross-
11 examination, when the guardian ad litem admitted that she told the petitioners' attorney
12 on October 21, 2005, promptly after providing her with a copy of Dr. Edwards' report,
13 that she would not recommend a guardianship. This was before the guardian ad litem had
14 talked with Earl Fisher, Emma's oldest son and the proposed guardian; Janet Lotto, who
15 was Emma's long-time neighbor; either of Emma's sisters, Elsie Ball or Annie Smiley;
16 Emma's sister-in-law, Ruth Gabelein Ohm; or Emma's brother-in-law, Steve Smiley.

17
18 85. Janet Lotto, wife of Ray Lotto, has been Emma's neighbor since 1979 and
19 considers her a good friend. During that time, Ms. Lotto never saw any signs, physical or
20 otherwise, that Emma's twins were abusing her. Rather, Emma always talked about her
21 twins in a loving way to Ms. Lotto. Ms. Lotto noticed a change in Emma after Shorty
22 died; she described Emma as lost. Whenever she and her husband closed down their
23 Whidbey Island house for a trip, Ms. Lotto would bring perishable food to Emma, along
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25 ⁵³ Exhibit 79.

1 with clothes that she no longer wanted. On two separate occasions, she took food to
2 Emma, on Thanksgiving of 2004 and on Christmas of 2004. While she and Emma were
3 standing in the front yard talking, Emma leaned over, whispering, and told Ms. Lotto to
4 whisper too, because she did not want Vernon Gabelein to know about the food. This
5 surprised Ms. Lotto because it was out of context for Emma to do this. Ms. Lotto was
6 left with the impression that Emma was not all right.
7

8
9 86. Questioned as to whether she was biased because her husband had tried to
10 buy Emma's property, Ms. Lotto said that she had never wanted to buy Emma's property
11 in the first place, that she has her husband have sold their Whidbey Island property and
12 that they have too much to take care of now. Ms. Lotto said that she and her husband
13 flew back from San Francisco to testify because they are concerned about Emma and that
14 they have nothing to gain personally by doing so. Ms. Lotto verified that she and her
15 husband have loaned the twins money for these proceedings because they believe that an
16 injustice has occurred. The court credits the testimony of Ms. Lotto on all points.
17

18 87. Don Gulliford, a retired attorney who has some beach cottages in Emma's
19 neighborhood, found Emma during the summer of 2003 wandering along the ditch
20 holding a toothbrush. He helped Emma into his truck and drove her home, then talked to
21 the twins about her condition and her welfare. He said Emma seemed confused and an
22 indeed of assistance. When asked about Don Gulliford's testimony, Emma replied in a
23 loud angry voice, "LIAR." Emma flatly denied that this incident had happened; yet Mr.
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1 Gulliford had no reason to make this up. The court credits the testimony of Don
2 Gulliford.
3

4 88. There were other witnesses who describe Emma as constantly going to her
5 mailbox, even on weekends when mail was not delivered or after she had already picked
6 up her mail. One described Emma going through the garbage at the county boat ramp,
7 even after being advised that it was dangerous because needles from illegal drug use had
8 been discarded there. Another neighbor noticed that Emma was not tracking well,
9 although she attributed it to stress. The twins were concerned because their mother
10 would smoke and leave cigarette burns on the furniture. They also said that their mother
11 would leave food on the stove and the pan would burn, and that she would under or
12 overcook the food. The twins also said that their mother would thaw out several pieces
13 of meat at the same time, which was unlike her, or would try to cook meat that had gone
14 bad. Ron visited Emma in her home not long before the trial ended and noticed a lot of
15 trash in the kitchen, as well as leftover, spoiled food in the refrigerator. Ron was
16 concerned that his mother might eat some of the spoiled food. The guardian ad litem had
17 Bob or Sandy Fisher go over to the house to clean out Emma's refrigerator and to make
18 sure that the trash was emptied. The court credits all of this testimony about concerns for
19 Emma's personal safety.
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22 89. Frank Robinson grew up with Emma and has a home in the neighborhood
23 that he visits regularly. He said that he sees Emma often and has a good relationship with
24 her. Mr. Robinson described an incident that occurred in the summer of 2005, when he
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tried to talk to Emma as she was sitting in a pickup. Emma acted as if she did not know him, although he said he knew she did. He said Emma finally calmed down after the driver told her that it was OK, that he was a friend who wanted to help her. A month or two later, Mr. Robinson saw Emma with some other people who were painting her house, and Emma was fine and talked to him. But when he saw Emma in the hallway of the courthouse on the day that he came to testify at this trial, he said Emma once again acted as if she did not know him. The court credits the testimony of Frank Robinson.

90. Something similar happened to John Ohm, Emma's brother, during the trial. According to Earl Fisher, John came up to Emma to say hello. Emma asked him who he was. John replied that he was her brother. Emma then said, "Oh, I know John." Earl said that there was something wrong with his mother, that there were lapses when she does not know who they are. According to Don, who has been around Emma more than any other living person, his mom has never expressed anger at a person by ignoring them. Instead, Don said that she usually gives them a piece of her mind. The court credits this testimony from Earl and Don.

91. On the second day after the trial resumed in January of 2006, during one of the breaks, Emma started to go over to talk with Don Endicott (the twin against whom a domestic violence restraining order was ultimately entered and who has thus been prohibited from having any contact with her). Linda Gabelein saw this and testified that someone stopped Emma and brought her back. Linda heard Emma say that she did not know which one of the twins Don was. Don said that his mother said, "You're the

1
2 toothless one. Which one are you?" Earl Fisher heard his mother say that her boys are
3 twins and that she has difficulty telling them apart. Earl testified that his mother has
4 never previously had trouble telling the twins apart. Although they are twins, the
5 difference between the appearance of Don and Ron is, in fact, striking. Many of Don's
6 front teeth are missing, and he is clean-shaven. Ron, on the other hand, has all of his
7 teeth and wears a moustache. The court credits this testimony, which came from more
8 than one witness, about this incident.
9

10 92. The twins are also concerned because, up to the time that they brought
11 their mother to the hospital in June of 2005 by telling her that they were taking her to see
12 Linda and Vernon, Emma had refused to go to a doctor of any kind for over 30 years.
13 Ron testified that he took Emma for a checkup with a doctor in Freeland but that she
14 made such a scene that they left. As Ron was testifying, Emma was saying to her
15 attorney, loudly enough for anyone in the courtroom to hear, "That's not true! That's not
16 true!" However, when questioned during the trial about whether she had gone to the
17 doctor's, Emma said that she had not been since the twins were born. She said that she
18 did not like going to doctors, and then added, "I am not going to be forced. Why, it's my
19 body." The court credits the testimony of Ron Endicott on this point.
20

21 93. In reaching its decision in this case, the court has carefully considered the
22 opinions of the professionals described above: i.e., that Emma is fine. But it is the
23 court's strong impression, and the court finds, that Emma is not, in fact, fine but rather
24 that she is incapacitated. Emma has not appeared to be fine to this court, or to many
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2 people who are part of her family or otherwise knowledgeable about her and who have
3 nothing to gain from their testimony about their concerns.

4 94. Emma testified that, if someone must be appointed as her guardian, it
5 should be Bob Fisher. But the court finds that Bob Fisher would not be an impartial
6 guardian. The court had an opportunity to observe Emma's oldest son, Earl Fisher,
7 during his testimony and his attendance at every day of the trial. The court was favorably
8 impressed with Earl Fisher's testimony and his demeanor. The court credits Earl Fisher's
9 assurance that he does not want Emma's money or her property, unlike many others who
10 are involved in this action. The court credits Earl Fisher's testimony that he believes that
11 he will be able to work with his mother. Earl Fisher sees the guardian's position as one
12 of familial responsibility. He does not favor the twins, nor does he have animosity
13 towards them. The court shares Earl Fisher's belief that the twins need to get jobs and be
14 self-supporting.
15

16
17 ~~95. At the hearing on the petitioners' motion for entry of findings and~~
18 ~~conclusions based on the court's April 17, 2006 opinion on May 26, 2006, Emma's~~
19 ~~attorney advised the court that Emma was diagnosed with bladder cancer after the trial~~
20 ~~ended on March 1st, that she must have her bladder removed as a result, but that surgery~~
21 ~~cannot yet be scheduled because her blood platelet count is too high. Based on this~~
22 ~~information, the court finds that it is necessary and important to get a guardian appointed~~
23 ~~to assist Emma as quickly as possible.~~
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CONCLUSIONS OF LAW

1. The superior court has statutory authority to establish a guardianship of the person and/or of the estate of an incapacitated person. RCW 11.88.010(1). This may take the form of a limited guardianship if an incapacitated person needs some protection or assistance but is capable of managing some of her personal or financial affairs. RCW 11.88.010(2). In this regard, the court “shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person’s protection and assistance.” RCW 11.88.010(2).

2. An individual is “deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.” RCW 11.88.010(1)(a). Similarly, “a person may be deemed incapacitated as to the person’s estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.” RCW 11.88.010(1)(b). A determination of incapacity is a legal, not a medical, decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a determination of incapacity.

3. The standard of proof in a contested guardianship is clear, cogent, and convincing evidence. RCW 11.88.045(3). See also In re the Dependency of K.S.C, 137

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2 Wn. 2d 918, 925, 976 P. 2d 113 (1999) (“Clear, cogent, and convincing evidence exists
3 when the evidence shows the ultimate fact at issue to be highly probable”).

4 4. The legislature has determined that the liberty and autonomy of
5 incapacitated persons “should be restricted through the guardianship process only to the
6 minimum extent necessary to adequately provide for their own health or safety, or to
7 adequately manage their financial affairs.” RCW 11.88.005. If the court determines that
8 a person needs protection and assistance by reason of his incapacity, yet the person is
9 capable of managing some of his personal and financial affairs, then the court can order a
10 limited guardianship, imposing only such specific limitations and restrictions as are
11 necessary. RCW 11.88.010(2).

13 5. Under ch. 74.34 RCW, a “vulnerable adult” includes a person 60 years of
14 age of older who has the functional, mental, or physical inability to care for him or
15 herself, or who has been found to be incapacitated under ch. 11.88 RCW. RCW
16 74.34.020(13). Under ch. 74.34 RCW, “exploitation includes an act of exerting undue
17 influence over a vulnerable adult that causes her to act in a way that is not consistent with
18 relevant past behavior. RCW 74.34.020(3). Under RCW 74.34.110, a petition may be
19 brought to protect a vulnerable adult from exploitation; under RCW 74.34.320, the
20 petition may be brought by a vulnerable adult’s family members where necessary.

22 6. Respondents Saul and Gabelein argued, and the court concludes, that the
23 burden of proof in a vulnerable adult proceeding is clear, cogent, and convincing.
24 However, when a donee occupies a fiduciary relationship to the donor at the time that the
25

1 gift is made, the burden of proof is on the donee to prove lack of undue influence. White
2
3 v. White, 33 Wn. App. 364, 368, 655 P. 2d 1173 (1982).

4 7. A guardian ad litem presents one source of information among many, but
5 credibility is the province of the court. Stamm v. Crowley, 121 Wn. App. 830, 839-841,
6 91 P. 3d 126 (2004). The court can cast a skeptical eye when skepticism is called for.
7 The court is not bound by the guardian ad litem's opinions, which the court may ignore
8 when they are not supported by other evidence or are otherwise not convincing.
9

10 8. At age 79, Emma meets the age criteria of a vulnerable adult. Since her
11 husband died in 1998, Emma has been vulnerable to others, who have taken advantage of
12 her desire to please those persons she perceives as being her friends or as looking out for
13 her best interests, such as Linda Gabelein and Samantha Saul. Emma has sold property
14 to members of the Gabelein family for a fraction of its value, jeopardizing her ability to
15 remain in her home for the remainder of her life.
16

17 9. Because of her relationship with Samantha Saul and Linda Gabelein, the
18 court concludes that these two individuals occupy a fiduciary (in the case of Samantha)
19 and a de facto fiduciary (in the case of Linda) relationship to Emma. Substantial
20 circumstantial evidence supports this conclusion. As a result of their relationship,
21 Samantha and Linda have each been in a unique position to influence Emma by
22 purporting to act with Emma's interests in mind. Samantha told Emma that the price that
23 Emma placed on the property that they wanted to buy was too low and that Samantha
24 would pay a higher price. The same is true for Linda Gabelein. When Emma offered to
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2 sell property to the Gabeleins, Linda told Emma that the price she quoted was ridiculous
3 before they settled on a price of \$150,000 net. The fact is that the "higher" prices that
4 were agreed upon for the sales were also extremely low, although Emma does not appear
5 to be concerned about that.

6 10. Since the death of Emma's husband, Samantha and Linda have each
7 become Emma's financial advisors. Given Emma's age, her lack of sophistication in
8 financial matters, and her almost childlike trust in Samantha and Linda, each of them
9 should have insisted upon getting appraisals and paying fair market value in purchasing
10 property from Emma.
11

12 11. After seeing Emma sell off her property to three different members of the
13 Gabelein family, it is understandable that Sandy Fisher is concerned that there will be
14 nothing left for Emma's sons to inherit. The only ones who seem to be capable of
15 influencing Emma are the Sauls and the Gabeleins. Sandy Fisher undoubtedly would
16 rather rely on Vernon Gabelein's influence than on Emma's goodwill.
17

18 12. By selling her property as far below its market value as she has, Emma
19 has, in essence, made gifts to the Sauls and the Gabeleins of substantial value, based on
20 the difference between the sales price and the fair market value of each property. The
21 only relationship between Emma and the Gabeleins, and thus the Sauls, is that Emma's
22 brother is married to Vernon's sister. The Gabeleins and the Sauls have received an
23 unnaturally large portion of Emma's estate, especially considering that Emma has
24 children, grandchildren, and siblings of her own. These gifts may or may not have tax
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1 consequences for Emma, but this is a topic that should have been but was not investigated
2 or considered.
3

4 13. Emma was unusually vulnerable because of her age, the death of her
5 husband of 43 years, her lack of prior experience with financial management of any kind,
6 and her isolation.

7 14. Although the court agrees with the witnesses who testified that Emma is
8 stubborn, the court concludes that her obstinacy has evolved to the point of being
9 unreasonably and obstructively determined. The court concludes that Emma's interests
10 in the property sales were not safeguarded. The court has found that Emma is financially
11 unsophisticated, that she was unaware of the value of the property that she sold (other
12 than that she now readily agrees that she sold it for less than it was worth), and that
13 Emma has not made realistic plans for her future. A disclosure in a document would
14 mean nothing to Emma. Although Emma met with an attorney twice during the course of
15 the sale of property to the Gabeleins, each meeting was only for 20 to 30 minutes. As far
16 as the evidence before the court showed, the only information that the attorney had with
17 which to advise Emma would have been the information that Emma herself provided.
18 And Emma had been referred to the attorney who advised her about the property sale
19 because her own attorney was at the time representing the Gabeleins in a partition action
20 and had a conflict of interest. Thus, Emma did not know the attorney who reviewed the
21 Gabelein purchase and sale agreement for her. The guardian ad litem questioned whether
22 Emma would be forthcoming with such an attorney, who she did not know. Without the
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1 background developed through this trial, the attorney would not have been able to
2 provide any useful advice or review.

3
4 15. The court concludes that Emma is a vulnerable adult who has been
5 exploited by the Sauls and the Gabeleins. The Gabeleins and the Sauls have gained
6 Emma's confidence, are aware that they have the ability to exert undue influence over
7 Emma, and, in fact, have exerted undue influence over Emma. Vernon Gabelein even
8 represented to Sandy Fisher that he has the ability to exert undue influence over Emma.
9 The Sauls and the Gabeleins have purported to act with Emma's interests in mind by
10 paying her more for her property than she asked, while still not paying anything close to
11 what the property was actually worth. Because of the fiduciary relationship that
12 Samantha and Linda each have with Emma, the court concludes that the Sauls and the
13 Gabeleins have the burden to prove that there was a lack of undue influence in the
14 property transactions from which they benefited and that they have not met that burden.
15 Nevertheless, the court concludes that there is clear, cogent, and convincing evidence that
16 Emma is a vulnerable adult and that she has been exploited by the Sauls and the
17 Gabeleins. Emma insists that she does not care. But Emma has not acted in a way that is
18 consistent with her relevant past behavior: i.e., to be extremely frugal and to conserve
19 her money and assets.
20
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22 16. No matter how long she has had her license, a professional real estate
23 agent such as Samantha has an obligation to advise an unsophisticated client selling
24 property such as Emma as to the market price based on comparable sales and about how
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2 long it is reasonable for property to remain on the open market in order to get the best
3 price. Samantha should have but did not advise Emma that she needed to be patient
4 when Emma was trying to sell the first five acres, because property is not always sold on
5 a deadline.

6 17. Samantha had an obligation to advise Emma about the fair market value of
7 the property that Samantha purchased from her before the purchase. Linda had an
8 obligation to advise Emma about the fair market value of the property that Linda
9 purchased from her before the purchase.
10

11 18. The guardian ad litem and others believe that this case is all about Emma's
12 property and not about Emma. The court disagrees. In the court's judgment, this case is
13 all about Emma. The court credits the arguments of counsel for petitioners: i.e., that it is
14 hard to put yourself at significant risk of financial harm if the only thing that you are
15 managing is a small retirement check of \$556.13 a month. The real property that was the
16 bulk of Emma's net worth upon the death of her husband is crucial to the evaluation of
17 whether she is at significant risk of financial harm. Emma's risky and uninformed
18 decisions will have an enormous impact on her in light of her wish to remain in her home.
19

20 19. Emma is not able to protect her resources to meet her future needs.
21 Although she can handle grocery shopping and some simple banking, she lacks the ability
22 to manage a larger estate. The court concludes, by clear, cogent, and convincing
23 evidence, that Emma is at significant risk of financial harm based upon a demonstrated
24 inability to adequately manage property or financial affairs.
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2 20. The court concludes that Emma's memory is suspect. She is suggestible
3 to the memories of others, especially as to what happened the night before she went into
4 the hospital in June of 2005, even though those who have insisted that the twins have
5 abused Emma were not present on this occasion. In the court's judgment, it is not likely
6 that her sons would have called 911 on June 14th, when she fell, if they were abusing her.
7 Because Emma was diagnosed in the hospital in June of 2005 with a urinary tract
8 infection that can cause elderly persons to become disoriented, the court concludes that it
9 is highly likely that Emma fell out of bed, as the twins reported. Any bruising noticed on
10 her later on could be explained by a fall, either when she fell out of bed or when she fell
11 in the yard in the afternoon of June 14th. Further, Emma did not remember alleged abuse
12 by the twins until after Samantha visited her in the hospital.
13

14 21. The court concludes, based on clear, cogent, and convincing evidence, that
15 Emma is at significant risk of personal harm based on a demonstrated inability to
16 adequately provide for her nutrition, health, or physical safety. In the court's opinion, the
17 professionals who have concluded otherwise have not had all of the information that was
18 provided to this court during the trial, having based their opinions primarily on short
19 interviews done months ago. The court is also mindful that the professionals based their
20 opinions on information gathered when Emma was staying with Bob and Sandy Fisher.
21 But the court concludes that things have changed since Emma moved back into her home
22 alone on December 1, 2005. In December, she failed to recognize Frank Robinson, who
23 grew up with her, or her own brother, until he removed his hat; in January, she could not
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2 tell the difference between her twins; in February, she was prescribed medication for a
3 urinary tract infection, which she may or may not have taken, and then was diagnosed
4 with another urinary tract infection two weeks later. The court concludes that Emma
5 appears to have gone downhill since she started living alone on December 1, 2005.

6 22. Emma is capable of managing some of her personal and financial affairs,
7 such as her normal, everyday household expenses. Emma should be allowed to continue
8 to manage those expenses, and she should be allowed to manage her \$556.13 monthly
9 retirement income. The court therefore concludes that a limited guardian of Emma's
10 estate should be appointed and that the limited guardian should manage her property and
11 the rest of her financial affairs. If necessary, the limited guardian should provide Emma
12 with sufficient funds, in addition to the \$556.13 monthly income, so that she can meet her
13 reasonable household expenses.
14

15 23. The court concludes that Emma also requires assistance in meeting her
16 medical, legal, and day-to-day needs. An alternative to a guardianship of her person
17 could be for Emma to appoint someone to serve as her attorney in fact, as Emma has
18 done with Samantha Saul. However, the court concludes, based on Emma's real estate
19 transactions that involve Samantha Saul, that Samantha Saul should not be left in the
20 position of Emma's attorney in fact. There is thus no reasonable alternative to a
21 guardianship of the person. But Emma is capable of living on her own, as long as she has
22 assistance with transportation, medical, and nutritional needs. At present, and assuming
23 that those who have been assisting Emma to meet these needs have been doing so out of
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2 concern for Emma and not out of concern for her property, Emma has an adequate
3 support system to enable these needs to be met. The court therefore concludes that a
4 limited guardianship of the person is appropriate, with a goal of allowing Emma to live in
5 her house as long as possible.

6 24. The limited guardian should consult with Emma as to her wishes but
7 should also have the power to decide issues in Emma's best interests. Because Emma
8 now believes, rightly or wrongly, that Ron and Don beat her up, it would not be in
9 Emma's best interests to allow them to live with her in her home, unless circumstances
10 change drastically. Ron, however, should be allowed to visit his mother, provided that
11 she wants him to do so. And, after the expiration of the restraining order against Don, he
12 should be allowed to visit his mother as well, provided that she wants him to do so.
13 Likewise, Emma should be allowed to visit with anyone she wishes.
14

15 25. The court concludes that the attorney's fees reasonably incurred for the
16 defense of the guardianship should be paid from Emma's estate. The court concludes
17 that the reasonable fees of the guardian ad litem and of Dr. Edwards should also be paid
18 from Emma's estate.
19

20 26. The court concludes that attorney's fees reasonably incurred to establish
21 the guardianship should be paid from Emma's estate. The court also concludes that
22 reasonable attorneys fees incurred to secure relief for Emma under ch. 74.34 RCW
23 should be awarded to the petitioners from the Sauls and the Gabeleins, jointly and
24 severally. The court concludes that it is appropriate for petitioners to provide a proposed
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allocation of their attorney's fees incurred through entry of orders based on these findings and conclusion, so that the court can determine how much fees should be awarded and how they should be allocated.

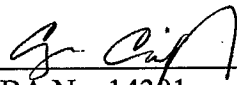
~~27. Based on the report from Emma's attorney about the decline in her health after the trial ended on March 1, 2006, the court concludes that there is an emergency and that time is of the essence to get a limited guardian appointed for Emma.~~

DATED this 2 day of June, 2006.


JUDGE VICKIE I. CHURCHILL

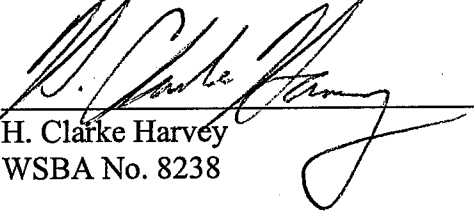
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John Demco
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Zylstra, Beeksma & Waller
Attorneys for J. Earl Fisher

Michael M. Waller
WSBA No. 6310

EXHIBIT A

WITNESS LIST


1. Ronald Endicott
2. Elsie Ball
3. Shayne Thatcher
4. Jerry Morrison
5. Larry Kwarsick
6. Don Gulliford
7. Roger Miller
8. Mike Allen
9. Sharon Mills
10. Morrie Parker
11. Ruth Ohm
12. Stewart Thompson
13. Jenny Barrett
14. Phil Bakke
15. Dr. Janice Edwards
16. Earl Fisher
17. Verlain Gabelein
18. Frank Robinson
19. Ray Lotto
20. Janet Lotto
21. Ed Wooten
22. Donald Endicott
23. Sandy Fisher
24. Joe Elia
25. 
26. Samantha Saul
27. Chris McCarthy
28. Debbie Page
29. Steven Smiley
30. Marcia Guerin
31. Linda Gabelein
32. Veronon Gabelein
33. Emma Endicott
34. Robert Saul
35. Les Wahl
36. Barbara Mearing

EXHIBIT B

Cause No. 05-4-00151-0

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EX #	PLAINTIFF	Status	EX #	DEFENDANT	LOCATION
1	Deed Abstract	A			
2	Comcast Statement	A			
3	Statutory Warranty Deed-2001	A			
4	Assessors Summary Snapshot-2001	A			
5	Assessors Summary Snapshot-2003	A			
6	Addendum to Purchase & Sale Agreement	A			
7	Statutory Warranty Deed-2002	A			
8	Realist.com Property Detail	A			
9	Copy of Check to Ronald Endicott	A			
10	WGH Release of Responsibility	A			
11	Statutory Warranty Deed-2005	A			
12	Boundary Lind Adjustment	A			
13	Death Certificate- Orvel Endicott	A			
14	Real Estate Excise Tax Affidavit	A			
15	Agreement as to Status	A			

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EX #	PLAINTIFF	Status	EX #	DEFENDANT	LOCATION
	of Community Property				
16	Letter to Annie	A			
17	Sound Planning Services Cost Estimate	A			
18	Boundary Line Adjustment Application	A			
19	Boundary Line Adjustment Review Comments	A			
20	Map	A			
21	Map	A			
			22	Vacant Land Purchase & Sale Agreement-Gabelein	
			23	Vacant Land Purchase & Sale Agreement-Saul	
			24	Estimated Closing Statement	
			25	Parcel Summary Report 2002	
			26	Durable Power of Attorney	
			27	Vacant Land Purchase & Sale Agreement-Thompson	
			28	Boundary Line Adjustment	
			29	Hooberman Sale	

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EX #	PLAINTIFF	Status	EX #	DEFENDANT	LOCATION
				Information	
			30	Taylor Sale Information	
			31	2004 Sale Information	
		A	32	Thompson Property 2001 Sale Info	
		A	33	Saul Property 2002 Sale Info	
34	E-mail from Larry Kwarsick to Thatcher & Morrison	A			
35	Thatcher & Morrison, Inc, Contract	A			
36	Assessor Account Summary Snapshot	A			
37	Assessor Account Summary Snapshot	A			
38	Assessor Denial of Exemption	A			
39	Ltr from Jessie Valentine to the Gabeleins	A			
40	Copy of Complaint in 03-2-00312-8	R			
41	Copy of Note for Trial Setting in 03-2-00312-8	R			
42	Copy of Notice of Readiness & Trial Date in 03-2-00312-8	R			

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EX #	PLAINTIFF	Status	EX #	DEFENDANT	LOCATION
43	Copy of Stipulation in 03-2-00312-8	R			
44	Copy of Title Insurance	A			
		A	45	Med/Psych Report	
		A	46	GAL Report	
47	Agreement file 6/24/65	A			
48	Easement Document	A			
49	Check Register	A			
50	History & Physical 6/16/05	A			
51	Social Services Evaluation	A			
52	Appraisal Report	A			
			53	Summary Appraisal Report	
			54	Photo	
55	Loan Application	A			
56	Appraisal Report	A			
57	Assessor's Summary Report	A			
58	1 st Discovery Requests to Saul & Gabelein	A			
59	Durable Power of Attorney	A			
60	Voluntary Statement Form	A			
61	Declaration of Samantha Saul	A			

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EX #	PLAINTIFF	Status	EX #	DEFENDANT	LOCATION
			62	Matrix of Lotto Property	
63	Summary Appraisal Report	A			
64	Listing Detail-Vacant Land	A			
65	Statutory Warrant Deed	A			
66	Quick Claim Deed	A			
67	Vacant Land Agent Detail Report	A			
68	Quit Claim Deed	A			
69	Addendum to Purchase on Sale Agreement	A			
70	Parcel Summary Report	A			
71	Dclr of Linda Gabelein	A			
72	Parcel Summary Report	A			
73	Map	A			
74	Vacant Land Purchase & Sale Agreement Specific Terms	A			
75	Receipt	A			
76	Firpta Certification	A			
77	Parcel Summary Report	A			
78	Dclr of Vernon Gabelein	A			
79	Partial Transcript	A			

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EX #	PLAINTIFF	Status	EX #	DEFENDANT	LOCATION
80	Money Orders	A			
81	Money Orders	A			
82	Check Register	A			
83	Lack of Probate Affid	A			
84	Account Summary Snapshot	A			
85	Dclr of Bob Saul	R			
86	Dclr of Les Wahl				
87	Dclr of Robert Fisher				
		A	88	Endicott/Saul Wahl Rd Folder	
		A	89	Endicott/Saul Robinson Rd Folder	
90	Promissory Note				
91	Promissory Note	A			
92	Stmnt of Deborah Page				
93	Status Change Sheet	A			
94	Parcel Summary Report	A			
95	Statutory Warranty Deed	A			
96	Parcel Summary Report	A			
97	Transaction Summary				
		A	98	Real Estate Excise Affid	
		A	99	Stmnt from Windermere	
		A	100	Windermere Status Change Sheet	
			101	Map	

