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LAURIE ROBERTS' COLUMNS & BLOG

Laurie Roberts is a columnist for The Arizona Republic.

Court of Appeals strikes down probate fee ruling

Score one for the old, the sick and the vulnerable – which, in Arizona, is saying something.

The Arizona Court of Appeals on Thursday tossed out a probate judge's ruling that R.B. Sleeth must pay \$265,000 to a [lawyer](#) who spent most of his time fighting the old guy's wishes.

Sleeth, as you may recall, is the 81-year-old Paradise Valley man who spent 10 weeks imprisoned in a lock-down unit for advanced Alzheimer's patients in Scottsdale, never mind that he didn't have Alzheimer's. It took him nearly two years to extricate himself from Maricopa County's probate court. Unfortunately, by then his \$1.4 million estate had been reduced to "virtually zero", according to court records.

Now, however, both he and the others "protected" by probate may be able to fight back against the cozy club of fiduciaries and attorneys who so often seem to wind up with much of the money of the people they are paid to protect.

"Although the statutes require the protected person to pay for the services of those appointed or hired to assist him, this case illustrates an underlying flaw in the scheme that makes all the more compelling the superior court's close scrutiny of fee requests..." the judges wrote.

"When a guardian or conservator has no [personal financial](#) obligation for attorney fees and no concern over whether his expenditures will be fully approved, he may lack incentive to avoid financial improvidence. In a case in which the protected person's estate suffers significant and harmful losses, the superior court must exercise its independent judgment to determine what portion of the attorney's fees were reasonably incurred."

Translation: it's time for probate judges to pack away their well-worn rubber stamps and remember who it is they are there to protect.

R.B.'s battle began in December 2007, when his son Mark stopped him from marrying Marge Foley and petitioned a probate judge to make him his father's guardian and conservator.

Marge and R.B. battled Mark through 2008, culminating in R.B.'s stay in the lockdown unit. Marge, then 73, claimed that R.B. was being overmedicated and that Mark was trying to cut her out of R.B.'s life, against his wishes. Mark claimed that Marge was freeloading and taking advantage of his father's fragile condition.

In December 2008, probate Commissioner Richard Nothwehr removed Mark as guardian but left him in control of his father's finances. By February, Jane Anne Geisler, an independent guardian, was appointed and R.B. was weaned from an array of medications, including a powerful anti-psychotic. A month later, he and Marge married and returned home to find his house a mess, his utilities cut off and his [bank account](#) essentially empty.

R.B. was finally freed from the need for a guardian in November 2009, after a doctor determined he was never demented, just overmedicated. By then, Mark had already given up control of R.B.'s money amid discoveries that the older man had a stack of unpaid bills and his long-term-care insurance had lapsed.

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Despite all that, Nothwehr approved a \$265,000 bill from for Mark's attorney, Scott Ferris. Never mind that Ferris raised his rates by 18 percent – from \$275 an hour to \$325 an hour as the [economy](#) collapsed. Never mind that R.B. was left so destitute that he had to take out a reverse mortgage on his house to pay the bills. Never mind that Mark and Ferris thwarted R.B.'s wishes every step of the way.

Nothwehr ruled that R.B. owed Ferris \$265,000.

Cue the appellate judges, who have ordered Nothwehr to reconsider. They rejected Ferris' astonishing claim that the laws don't require that the protected person derive any benefit from the legal fees he or she must pay. "We cannot agree that the legislature intended that courts overlook whether an attorney's or fiduciary's services produced any value or benefit to the protected person," the judges wrote.

Can I get a hallelujah?

There's lots of other good stuff in the 21-page ruling by Judges Sheldon Weisberg, Philip Hall and Donn Kessler. No more charging \$100 an hour to make copies and send faxes and e-mails. No more block billing, making it impossible to determine whether the bills are reasonable. (In the eyes of probate judges, they always are.)

No more expecting to be paid for every hour worked. Henceforth, attorneys will have to prove their bills are actually reasonable and that their work benefited the person paying for it.

"To suggest that any action taken by counsel, however futile or unsound, warrants court approval is in insupportable," the judges said.

Can I get an amen?

Editor's note: Roberts' sister, Appellate Court Judge Ann Timmer, chairs a committee to review Probate Court practices. The Republic is disclosing the relationship to avoid any perception of a conflict of interest.

(Column published Dec. 11, 2010, *The Arizona Republic*)

NOTE: To read the Court of Appeals opinion, click [here](#). Then, on th left hand side, scroll down to and click on Opinions Div I. Then click on CIVIL and look for the Dec. 9 case, Sleeth v. Sleeth.

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posted by OldVoter on Dec 10, 2010 at 08:54 PM

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There would not have been justice without your expose. Thank you.

posted by [bd10157A](#) on Dec 10, 2010 at 10:05 PM

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Thank you Laurie. All these lawyers, guardians, probate judges, are pigs! They use and destroy good people because they are out of control! Sociopaths!, Psychopaths! Dangerous People in positions of legal authority! Bring In The [Grand Jury](#) and Bust em!



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posted by canijustsay on Dec 10, 2010 at 11:39 PM

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Yahoo !!! it's about time someone paid attention to this legal financial rape

posted by ElaineRenoire on Dec 11, 2010 at 08:00 AM

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AMEN, Laurie!

This case also demonstrates the very reason conservatorship is designed to be a matter of last resort. The legal proceedings strip the alleged incompetent person of all his/her civil rights and liberties - unbelievably, including the right to complain.

One of the first actions of a court-appointed conservator is to freeze and seize the assets; thereby denying the ward the ability to hire counsel of choice. The result is financial exploitation under the guise of "protection."

Things are changing in Arizona, thanks a large part to commitment from courageous reporters like you.

JOIN the national movement for reform. JOIN NASGA!

Yours,
Elaine Renoire
NASGA
www.StopGuardianAbuse.org
www.AnOpenLetterToCongress.info
<http://NASGA-StopGuardianAb...>

posted by hamondlane on Dec 11, 2010 at 08:03 AM

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The timing of this case is most curious... (An Implied Innuendo)

The Court of Appeals is NOW moving...?

The State Bar Association is still sitting on their collective (Pro Per) Assets... **WHY?**

Competence of Commissioner Linsey Best Ellis? (Grand Jury Material!!)

posted by TamiGoldmann on Dec 11, 2010 at 09:58 AM

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You go girl!

posted by kimmanire on Dec 11, 2010 at 10:32 AM

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I say AMEN to this article, and the judges who are righting the wrongs done to this man.

I would like however to make it known that this is happening all across the U.S., and ask that everyone reading this blog, join forces to help the other victims of these horrific abuses of power, and greed.

I am from Texas, Denton to be exact, the judge on my families case, was reprimanded for favoritism, and over site, however, he was allowed to abuse his powers to help advance and distribute my in-laws money to his "close ties". Thus leaving my in-laws not only indigent, but also for the state to pay their way. The court's favored appointees, walked away with well over half a million. This same judge, allowed his "close ties" to help a "ward" change her will, naming the judge, his personal CPA/ longtime friend and business partner, his "ex-wife", and the personal [attorney](#) who handled his and ex's divorce, and others who were on our case to be named as beneficiaries of this lady's will. My in-laws were ISOLATED, OVER MEDICATED, AND THEIR ESTATE WAS TOTALLY DEPLETED.


There are others in Texas, many others, who are still fighting to get their loved ones free from these

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 we don't need food.
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 Mushi sold them through Peak 6 investments and garnered a large commision on the deal...Coyotes should now be able to re-sign Bryz....
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abuses.

I commend your writing of this article. GREAT JOB!!!!

kimmanire@aol.com

posted by sterbini on Dec 11, 2010 at 11:19 AM

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Hopefully the GRAVY TRAIN that these Fiduciaries and Lawyers are feeding off of will end soon. I've seen one too many "incapacitated persons" gone broke.

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