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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF KING

8 In re the Guardianship of

9 OMANA THANKAMMA,

10 An Incapacitated Person.
11

No. 18-4-05231-6 SEA

PETITION FOR PRELIMINARY
INJUNCTION
12

13 **I. PETITION**

14 Jayakrishnan Nair (the "petitioner"), the only son of the IP, hereby petitions the Court for a
15 preliminary injunction barring respondents Channa Copeland (the guardian) and Harborview
16 Medical Center (the medical facility where the IP is being held) and its staff from prohibiting or
17 preventing supervised visits between the petitioner and IP at Harborview.

18 **II. FACTS**

19 Omana Thankamma, the IP, is a 77-year-old quadriplegic detained and isolated in her
20 hospital room at Harborview Medical Center in Seattle, where she is allowed no visitors. She is a
21 citizen of India with a B1/B2 visa allowing her to visit in the U.S. for six months at a time. She
22 has stayed with her son while visiting in the U.S. over many years. In April of 2012 the IP had
23 triple bypass heart surgery at Atlanticare Hospital in New Jersey. She suffered a stroke in 2014,
24 leaving her partially paralyzed. She suffered a second stroke in August 2016. Because of
25 difficulties in swallowing, she now uses a PEG tube for feeding, and a urinary catheter for urine
26 collection.¹

27 ¹ A PEG tube, referring to percutaneous endoscopic gastrostomy, is a tube used to deliver nutrition, hydration and medicines directly into a patient's stomach, bypassing the mouth and esophagus.

1 The IP speaks Malayalam, one of the 22 official languages of India, spoken by some 35
2 million people in the state of Kerala in southern India and elsewhere. Her knowledge of English
3 is very rudimentary.

4 Petitioner is in his mid-thirties and is the son of the IP. He has been very active in her care
5 for many years. His mother and he have a close relationship, as well as petitioner with the rest of
6 his family, who live in India. When the IP has been in the hospital, or at the hospital's nursing
7 facility (Paramount), petitioner visited the IP nearly every day, sometimes for hours at a time.

8 Channa Copeland was appointed as the guardian of the person and estate for the IP on
9 November 28, 2018. The order appointing the guardian provided that the "guardian will arrange
10 for placement of Ms. Thankamma within 25 miles of Jay Nair's home located at . . . Redmond,
11 Washington 98053."² The purpose of this provision was so that Mr Nair could maintain familial
12 and emotional ties with the IP, and so that Mr. Nair could visit his mother. Mr. Nair was also
13 listed as a person authorized to receive notice of guardianship proceedings pursuant to RCW
14 11.92.150.³ There was no provision in the order appointing the guardian that had the effect of
15 limiting petitioner's contact with his mother or the IP's contact with her son.

16 The IP has been at Harborview off and on since July, 2018. Petitioner was able to see his
17 mother through early July, 2019, and saw her frequently. On July 4, 2019, after his sister had
18 flown to the area from India, they both visited the IP at Harborview. There was no problem.
19 They again visited the next day for an hour with no problem. Then Dr. Hanh told Mr. Nair not to
20 come to visit his mother for two weeks, as some unidentified person had found a sugary-like
21 substance in the IP's feeding tube, and the hospital wanted to investigate.

22 Mr. Nair was in favor of such an investigation, because he knew he had not put anything in
23 his mother's feeding tube. Nor has anyone put forward a motive for him to do so. After two
24 weeks, Mr. Nair contacted Harborview and attempted to find out about visiting his mother. He
25 got no response. He sent multiple letters and emails without response.

26
27 ² Order Appointing Full Guardian at 5.

³ Id., ¶ 15.

1 Desiring to see his mother again before she passed away, Mr. Nair responded by filing
2 complaints with numerous agencies and several federal lawsuits, some of which are still pending.
3 His sole desire in this petition is to be able to visit with his mother, even under supervision, while
4 his mother is still alive, which is likely not much longer. He would like to be able to have
5 supervised visits with his mother every day from 5:00 p.m. to 6:00 p.m., or at some other time as
6 may be fixed.

7 In a hearing on November 6, 2019 before Commissioner Velategui in this matter,
8 Commissioner Velategui stated that there is "no court order stating that [Mr. Nair] cannot visit
9 with his mother."⁴ The guardian has even stated that she has no objection to supervised
10 visitation. See accompanying Declaration of Paul Barrera, Ex. D, at 5.⁵ Harborview eventually
11 responded in writing to Mr. Nair's repeated requests for visitation in a letter dated October 31,
12 2019 to Mr. Barrera, Mr. Nair's attorney. Barrera Dec., Ex. G at 2. Attached to the letter is
13 Harborview's visiting policy. *Id.*, Ex. G at 3-5. The letter states that "Harborview is concerned
14 that Mr. Nair's presence will both interfere with the delivery of care and the provision of a safe
15 environment for the patient, as well as staff." The specifics are stated as follows:

16 This concern arises out of prior visitation by Mr. Nair in which he
17 exhibited behaviors that put patient safety at risk. He has also had interactions
18 with staff in which he has been abusive or threatening which further impacts our
19 ability to provide a safe environment in which to deliver care. In addition, we
20 have received information from the referring facility about similar behaviors in
21 that care environment.

22 Barrera Dec., Ex. G at 2.

23 It is impossible to even address these vague and conclusory statements. For example,
24 Harborview's "concerns" arise out of unspecified and undated "prior visitations", "interactions

25 ⁴ The hearing relating to petitioner's motions to terminate the guardianship and for a VAPO, and the guardian's
26 petition for instructions. The petitioner's motions were denied in an oral ruling and the guardian's motion was
27 granted.

⁵ This is a letter dated October 24, 2019 from the guardian's attorney to Mr. Barrera stating that "As far as the
Guardian is aware, Mr. Nair has not been prevented from communicating with his mother. However, the Guardian is
aware that Harborview (not the Guardian) has placed restrictions on visitation. To the best of our knowledge, Mr.
Nair's visits must be scheduled in advance and they must be supervised. *So long as these reasonable conditions are
met, Mr. Nair can visit with his mother.* Mr. Nair can coordinate visits with Harborview himself." [Italics added.] *Id.*

1 with [unnamed] staff, and its receipt of unverified “information” from unknown persons about
2 unspecified “similar behaviors” at some unknown period of time. It is impossible to verify or
3 evaluate the validity of Harborview’s concerns without more specific information, which
4 Harborview has failed to provide. Moreover, Harborview cannot explain why it permitted Mr.
5 Nair to visit his mother many months after these alleged “behaviors” occurred and “information”
6 was learned.

7 Harborview is basically keeping the IP isolated without access to anyone. Mr. Nair has not
8 seen his mother in over four months. He has knowledge about her care and previous treatments
9 which no one else has. She has no other family in the area to visit her and keep her spirits up.
10 Harborview does not even acknowledge that she is at Harborview, for if one asks at the desk for
11 her, Harborview’s response is that she is “not in the system” and Harborview has no information
12 about her whereabouts. Barrera Dec., ¶ 12. As a practical matter Harborview is keeping the IP
13 incommunicado without specifying any reasonable basis for such conduct.

14 Initially it appeared that the guardian and Harborview were working in concert to prevent
15 the IP’s visitation with anyone. The guardian would imply she did not oppose visitation, and
16 Harborview would say that the guardian did not permit visitation. When the inconsistency of this
17 approach was revealed, the guardian essentially conceded that she had no objection to visitation.
18 Then Harborview had to come up with a justification, and the best it could do is come up with
19 generalizations from alleged, unspecified and unproved incidents occurring many months before
20 July of 2019.

21 In August 2019 petitioner along with three family members filed a federal lawsuit against
22 the guardian, Harborview Medical Center and others regarding their conduct. This action is
23 pending in federal court. Now Harborview is apparently using its leverage with respect to
24 visitation as a club to try to get the federal lawsuit dismissed.

25 26 III. ISSUE

27 Should Mr. Nair be permitted supervised visitation with his mother at Harborview?

IV. EVIDENCE RELIED UPON

Petitioner relies upon the records and files in this action and the accompanying Declaration of Paul Barrera and Declaration of Jay Nair.

V. LEGAL ARGUMENT

1. IPs Retains the Right to Associate with Persons of Their Choosing.

It is clear that an incapacitated person “retains the right to associate with persons of the incapacitated person’s choosing.” RCW 11.92.195(1). The statute goes on to state that this “right includes, but is not limited to, the right to freely communicate and interact with other persons, whether through in-person visits, telephone calls, electronic communication, personal mail, or other means.” There are specific limitations on a guardian’s ability to restrict an IP’s right to “visit, interact, or otherwise associate with persons of the incapacitated person’s choosing . . .” RCW 11.92.195(2). These limitations essentially require a court order. RCW 11.92.195(2)(a) through (c). There is no such court order in the present case. Accordingly, the IP has the right to associate with people she has historically associated with, i.e., her son and family.⁶

This right of the IP applies with respect to Harborview as well. Harborview’s remedy is to obtain a protection order under RCW ch. 74.34 if Harborview legitimately believes that the IP needs protection from abuse. See RCW 11.92.195(3), which requires a protection order under RCW ch. 74.34 “to protect an incapacitated person . . .” Harborview is intentionally trampling on the rights of both the IP and Mr. Nair in preventing any and all visitation between the two for no specific reason.

RCW 74.34.110 describes the process of obtaining a protection order. The petition for such a protection order must state that the vulnerable adult has been abused or is threatened with abuse. RCW 74.34.110(2). More importantly, the petition “shall be accompanied by affidavit

⁶ The legislative intent expressed in RCW 11.88.005 emphasizes that liberty and autonomy of IPs “should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.”

1 made under oath, or a declaration signed under penalty of perjury, stating the *specific facts and*
2 *circumstances* which demonstrate the need for the relief sought.” RCW 74.34.110(3) [italics
3 added]. Harborview has not sought such a protection order, and it has adduced no *specific facts*
4 *and circumstances* which would justify its keeping the IP in seclusion and barring her from
5 seeing her son.

6 **2. Harborview Has Independent Duties to Its Patients.**

7 Harborview is required to follow hospital licensing regulations promulgated under
8 WAC 246-320-141. Under these regulations, hospitals must “[a]dopt and implement policies and
9 procedures that define each patient’s right to . . . complaint resolution, spiritual care, and
10 communication. If communication restrictions are necessary for patient care and safety, *the*
11 *hospital must document and explain the restrictions to the patient and family . . .*” WAC 246-
12 320-141(1)(b) [italics added]. Harborview has not documented the restrictions, nor explained the
13 basis for them to the family, i.e., Mr. Nair. Harborview must also adopt and implement policies
14 and procedures that define each patient’s right to “[f]amily input in care decisions.” It is hard to
15 see how Harborview can encourage or obtain such family input in care decisions by barring all
16 family members from visiting the IP.

17 Furthermore, “[a]ll patients have the right to be free from restraint or seclusion, of any
18 form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint
19 or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff
20 member, or others and must be discontinued at the earliest possible time.” 42 CFR § 482.13(e).

21 Harborview is clearly not complying with these regulations by barring all visitors from
22 seeing the IP on its vaguely articulated basis.

23 **3. This Court Should Enjoin the Defendants from Barring Mr. Nair’s Access to** 24 **the IP.**

25 The Court has the authority under RCW 7.40.020 to issue an injunction “restraining the
26 commission or continuance of some act, the commission or continuance of which during the
27 litigation would produce great injury to the plaintiff; or when during the litigation, it appears that

1 the defendant is doing, or threatened, or is about to do, or is procuring or is suffering some act to
2 be done in violation of the plaintiff's rights . . ." RCW 7.40.020. Furthermore, this court has
3 "full and ample power and authority" to settle all matters concerning estates of IP's. RCW
4 11A.96.020(1)(a) and (2).

5 The applicable requirements for issuance of a preliminary injunction are well settled,
6 namely the three-part *Kucera* test:

7 [O]ne who seeks relief by temporary or permanent injunction must show (1) that he
8 has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate
9 invasion of that right, and (3) that the acts complained of are resulting in or will
10 result in actual and substantial injury to him.

11 * * *

12 [S]ince injunctions are addressed to the equitable powers of the court, the listed
13 criteria must be examined in light of equity including balancing the relative interests
14 of the parties and, if appropriate, the interests of the public.

15 *Kucera v. State Department of Transportation*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000).

16 First, the authority cited above shows that the IP and her son have a clear legal or equitable
17 right to visit each other. The guardianship statutes do not eviscerate that right, but enhance it.

18 Second, Mr. Nair not only has a well-grounded fear of invasion of that right, but that right
19 is being invaded at this very moment. Mr. Nair is barred by Harborview from seeing his mother
20 on flimsy and unspecified grounds.

21 Third, Harborview's intransigence has resulted and will result in actual and substantial
22 injury to petitioner. His mother may pass away at any moment, as she does not have much time
23 left in this world, and he will then be deprived of those few precious moments left of her life to
24 visit with her and make her more comfortable from an emotional standpoint.

25 Balancing the relative interests of the parties, Harborview has little to lose. Supervised
26 visitation should ensure the care and safety of both the IP and hospital staff. The failure of the IP
27 and the son to visit with each other is devastating to both and causes great harm to both.

This Court has the equitable power to enter a preliminary injunction prohibiting the
guardian and Harborview from keeping the IP isolated and incommunicado. It should use that
equitable power here.

VI. CONCLUSION

This Court should therefore enter a preliminary injunction prohibiting the guardian and Harborview from barring Mr. Nair from visiting his mother and barring the IP from seeing her son.

Dated: November 12, 2019.

Dan R. Young

Dan R. Young, WSBA # 12020
Attorney for Jayakrishnan Nair

I, Jay Nair, declare under penalty of perjury under the laws of the State of Washington, that I have read the foregoing petition, know the contents thereof and believe the same to be true.

Dated: November 12, 2019.

Jay Nair

IN THE KING COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON

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4 In the Guardianship of:) CASE NO. 18-04-05231-6 SEA
5) Declaration of Jayakrishnan Nair
6 Omana Thankamma.)
7)
8 An Incapacitated person)
9)

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11 **DECLARATION**

12 I am the only remaining biological son of Mrs. Omana Thankamma, an Indian citizen visiting me
13 in the USA. Since 2012, she has been under my direct care due to several health issues such as heart
14 attacks and strokes, which have since disabled her and paralyzed her completely. I had immigrated to
15 United states from India at the age of 21 to do a masters in computer science from University of
16 Massachusetts, which I completed with a 4.0 GPA. Since then I had worked about 7 years at Microsoft, as
17 a Program Manager leading a team of 26 engineers. I had also completed an MBA from University of
18 Washington, summa cum laude.
19

20 Since my mothers disability, I have quit my job to become a fulltime caregiver at home, as she is
21 not eligible for any state assistance or Medicaid as a visiting Indian citizen. Therefore I hired two CNAs, a
22 nurse and a team of three therapists to give her the best possible care at home, in a 6 bedroom home in
23 Snoqualmie Ridge where I was assisted by two live-ins, one of them a CNA.

24 On 3/12/2018 the maid went to a neighbor who she never met before to borrow a blender, and
25 due to a misunderstanding the neighbor called Snoqualmie Police to check on the maid, as she did not
26 know the maid was requesting the blender for crushing pills for my mothers prescription medication,
27 and instead suspected illegal drug activity. An officer from Snoqualmie Police came and finding Omana
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1 in fresh bedding and watching TV. However he took her to Issaquah Swedish Hospital, where the doctor
2 evaluated her and sent her back with family as she was at baseline and "well taken care of"

3 My mother and I love each other more than our lives, and she has always mentioned this in
4 videos and declarations. Despite this fact, DSHS petitioned for a guardianship to ensure my mother gets
5 adequate care, and did not make any allegations than failure to hire qualified caregivers. We accepted a
6 resolution so the financial burden of her care, hitherto borne from my pocket, can be transferred to
7 state, and also agreed that the family can visit her anytime at a facility within 25 miles from home.

8
9 Despite all the above, the new "guardian" after finding out she has no money, has put her at a
10 shelter, which is officially ranked the worst care facility in the entire United States by CMS. After family
11 complained about her neglect, sending her several pictures of her covered in excreta and vomit, and
12 even a live video session showing she is never getting any care or cleaning, we complained to the
13 authorities about her neglect, and also filed a Federal Civil Rights Lawsuit.

14 As retaliation for the complaints, the guardian has stopped all visits to our mother and she is
15 being held in isolation for over 120 days in barbaric and psychopathic fashion. She was not allowed to
16 meet with any family or friends. She is a clinically depressed patient that depends on me for emotional
17 support, and prone to accelerate her deterioration from the distress and agony of separation.
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