

First Appellate District Civ. No. A145981

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

**MATTER OF THE ADVANCE HEALTH CARE DIRECTIVE OF
DICK R. MAGNEY**

**HUMBOLDT COUNTY ADULT PROTECTIVE SERVICES,
Petitioner and Respondent**

vs.

**JUDITH C. MAGNEY
Respondent and Appellant**

Appeal from Superior Court of Humboldt County
Honorable Dale A. Reinholtsen, Judge, Presiding
Humboldt County Superior Court No. CV150159

APPELLANT'S REPLY BRIEF

(Service on Attorney General Required by Rule 8.29)

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Judith Magney (“Appellant”), wife of Dick R. Magney (“Mr. Magney”), and surrogate under Mr. Magney’s Advance Health Care Directive (“AHCD”), hereby submits her Reply Brief in support of her appeal of the trial court’s final order denying her request for attorney fees and costs incurred defending her husband/principal’s wishes pursuant to his AHCD.

I. INTRODUCTION.

Implicit in an individual’s fundamental right to privacy is the right to control one’s own body and the right concerning one’s choices at the end of life regarding one’s quality of life and how one wishes to die with dignity. The Health Care Decisions Law (“HCDL”) set forth in Probate Code section 4600, *et seq.*, specifically recognizes “this fundamental right” of the individual “to control the decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or withdrawn.” Prob. Code § 4650(a); *see also* Cal. Code Regs. tit. 22, § 70707(b)(6). In codifying the HCDL, the California Legislature recognized that “[m]odern medical technology has made possible the artificial prolongation of human life beyond natural limits” to the point where continued health care does not improve the prognosis for recovery and, as such, “may violate patient dignity and cause unnecessary pain and suffering,

while providing nothing medically necessary or beneficial to the person.”

Prob. Code § 4650(b).

By the Verified Petition of Humboldt County Adult Protective Services (“APS”), which was indisputably based solely upon APS Nurse Heather Ringwald’s (“Nurse Ringwald” or “Ringwald”) state of mind, and not on objective facts nor admissible evidence to prove those facts, Respondent not only ignored Mr. Magney’s most fundamental of rights, but in its Opposition Brief, Respondent reiterates its belief that APS has the authority do anything that it chooses when it disagrees with an individual’s end-of-life decisions, and it believes that it can do so based upon the state of mind of Respondent instead of upon objectively based facts established in court. Respondent is wrong.

II. REPLY TO STATEMENT OF FACTS AND STATEMENT OF THE CASE.

In consideration of the “objective facts” of a matter, these facts must have been shown, at the trial court level, by admissible evidence.

Respondent’s statement of “facts” in its Opposition Brief cites to no admissible evidence produced before the trial court. Respondent provides no citation to the actual record of admitted evidence. Instead, Respondent cites as “facts” the mere *allegations* from its own Verified Petition and its

own Prehearing Statement of Issues, which were never proven at the hearing. Respondent's Opposition Brief ("ROB") 1 (¶ 1), 17.

Respondent also attempts to cite as "facts," *documents* which it attached to its Prehearing Statement and to its Intent to Withdraw Petition. Appellant's Objection and Motion to Strike made to the Trial Court (1 AA 59-77; 3 AA 239-242) *challenged the very authenticity and veracity of the purported facts and documents* referred to in that Prehearing Statement of Issues. None of the documents cited in the Opposition Brief and which were associated with either the Verified Petition or the Prehearing Statement, or any other pleading, were ever admitted as evidence at the hearing and are not evidence. The Verified Petition and Prehearing Statement themselves are not evidence. ROB 1 (¶ 2), 3-6, 9, 13, 14, and 18. Based upon the state of admissible evidence in the underlying matter, Respondent has not cited in its Opposition Brief to any facts in support of the lower court's decision, nor in support of any of its arguments to this court.

III. DISCUSSION.

On March 13, 2015, Respondent filed a Verified Petition to Enforce Duties of Attorney-in-Fact for Health Care and an Ex Parte Petition for Temporary Order Prescribing Health Care (the Verified Petition). The

Verified Petition alleged that Mr. Magney had an Advanced Health Care Directive and that his wife was not following the terms of that Health Care Directive. It alleged that Mr. Magney wanted to be treated for endocarditis, a heart infection, and that his wife (Appellant) was willfully withholding treatment for this heart infection from him. The Petition alleged that the doctors treating Mr. Magney also wanted to provide certain treatment to him but were stopped by Appellant.

Respondent deliberately misled the lower court through its Verified Petition when it asserted that the matters set forth in the Petition were true when, in fact, what it alleged in the Petition was only in the mind of Nurse Ringwald. Respondent purposefully manipulated the lower court into signing the temporary orders forcing this futile endocarditis treatment upon Mr. Magney by submitting documents leading the court to believe Mr. Magney's physicians wanted to provide this treatment but were being stopped from doing so by Appellant. Respondent APS and Nurse Ringwald purposefully withheld from the lower court that signed the temporary orders that Mr. Magney's *actual treating/primary physicians and specialists*, Dr. Phan, Dr. Zazueta and Dr. Sarna ("Treating Physician(s)") had withdrawn long term intravenous antibiotic treatment for endocarditis because of the standard of care that they as physicians determined appropriate (Mr.

Magney was terminal, had refused heart valve corrective surgery, and had no chance at meaningful recovery).

Respondent APS and Nurse Ringwald also withheld that they were informed by Dr. Phan, who was Mr. Magney's Treating Physician, that Mr. Magney, himself, was adamant that he did not want the endocarditis antibiotics to prolong his suffering with all of the other concomitant ailments he was suffering. Mr. Magney was adamant that he "wanted to be with the Lord." 1 AA 78-87; 3 AA 272-276, 312-315; ARJN Exhibit 2, 122-130; RT 77, 79, 81, 95, 119, 121, 156-157.

Respondent purposefully misled the lower court for two reasons. First, Respondent did so as a stall tactic to allow it to investigate what Nurse Ringwald unilaterally perceived as potential elder abuse or neglect, even though this was neither a criminal case nor a conservatorship petition, nor a civil matter alleging abuse or neglect. Second, Respondent did so because Respondent simply disagreed with Mr. Magney's choices and the decisions made by his Treating Physicians.

Through purposeful obfuscation, Respondent filed the Verified Petition and obtained Temporary Orders from the lower court, usurping Mr. Magney's long held choices, which were memorialized in his written Advanced Health Care Directive and which was consistent with what he

expressly told his Treating Physicians. When pressed to demonstrate at the hearing that Respondent possessed probable cause for the facts it alleged in its Verified Petition that Mr. Magney's wishes and health care directive were not being followed, Respondent was forced to admit to the trial court that no allegations, despite having been verified in its pleadings, were actually offered for the truth of any of the matters asserted, but instead were being offered only for Nurse Ringwald's state of mind.

Respondent could not and did not proffer any *objective facts* at the hearing to establish probable cause for the filing of its Verified Petition and Request for Temporary Orders based upon the claims made: that Mr. Magney wanted treatment for the endocarditis heart infection, his doctors wanted to give him the treatment, and Appellant was stopping it in violation of Mr. Magney's wishes in his health care directive. This is precisely why Appellant challenged the Petition of APS on behalf of her husband. Respondent's inability to establish such objective facts occurred despite the trial court providing ample opportunity for Respondent to prove up any facts it had asserted in its Verified Petition. Instead, Respondent elected only to proffer evidence of Nurse Ringwald's state of mind at the time she verified Respondent's Petition and requested the Temporary Orders *because there were no objective facts in support of the Verified Petition and*

Temporary Orders.

What this “state-of-mind” evidence did demonstrate, however, was that Respondent chose its course of action to obtain total medical control over Mr. Magney because Nurse Ringwald and her supervisors disagreed with Mr. Magney and Mr. Magney’s Treating Physicians. RT 31-69, 159-196.

Nurse Ringwald’s state of mind was not and is not relevant to the test of whether or not there were objective facts supporting the allegations she verified as true in the Petition. The trial court’s finding of probable cause based upon Respondent’s state-of-mind evidence (as opposed to admissible evidence) was in error.

As discussed more fully in Appellant’s Opening Brief and below, equally as troubling as the trial court’s basis for its ruling being bereft of admissible evidence regarding the objective facts to establish probable cause is the fact that *Respondent had no standing to file its Petition*. Respondent is not included in the list of governmental entities entitled by statute to bring a petition to challenge a health care directive. The statutory language of Probate Code section 4765, Probate Code section 48, and case law do not support Respondent’s assertion that Welfare and Institutions Code section 15600 endows it with special authority to file a Petition under

Probate Code sections 4765 and 4766. In other words, Respondent's assertion that because it is charged with investigating elder abuse it has overriding authority over advance health care directives is not based in law.

The repercussions of Respondent's actions on Appellant's husband and on Appellant are in the record. The emotional pain Mr. Magney was subjected to by Respondent's misconduct is referenced in the record by Dr. Phan's testimony, her admitted records, and also includes the trial court's own Court Investigator. RT 70-105, 108-158; 3 AA 267-307, 310-316; Appellant's Request for Judicial Notice ("ARJN") Exhibit 2, 122-130, 133-136, 198-245. Mr. Magney remains terminally ill, but because of Respondent's deliberate intrusion into his predetermined health care directives, directives made expressly to his Treating Physicians and his surrogate, Mr. Magney is now confined to a nursing home dying slowly and in intense pain, and fearful about when or if Respondent will again hijack his health care decisions. Appellant shares in her husband's fear of future APS involvement in their lives.

Moreover, the determination by this court as to who has standing and what is necessary to establish objective facts amounting to probable cause to bring such a Verified Petition is of paramount importance to all patients with health care directives: as testified to by Dr. Phan and by Nurse

Ringwald, Respondent has successfully interfered with the health care decisions of others by obtaining orders reversing their health care decisions, and will do so again. 1 AA 94-97; RT 70-105, 108-158; RT 31-69, 159-196.

Appellant and her husband are elderly and on social security. In the wake of Respondent's actions, the Magneys have suffered a crushing financial burden having to defend against Respondent's actions and the ensuing trial court orders and proceedings, all of which were based upon Respondent's fabrications and its deliberate, intentional omissions of the true facts.^{1/}

Any person who seeks to challenge a health care directive or decision, whether by a person with capacity or as directed in an advance health care directive, must first have standing to challenge those health care decisions or directives. If that person has established standing as required

^{1/} The companion conservatorship matter, PR150089, which was filed prior to the hearing in this matter and decided by the same trial court prior to the trial court's ruling on reasonable cause in this matter, found that Mr. Magney had the capacity to make his own medical decisions and dismissed the conservatorship petition. This was after taking Mr. Magney's testimony from the nursing home he is now confined to. Appellant was successful on behalf of her husband in having the medical Temporary Orders vacated that the Public Guardian had obtained without a petition pursuant to Prob. Code §§ 4765 and 4766. The Public Guardian's conservatorship petition was based upon the same state-of-mind claims of Nurse Ringwald. ARJN Exhibit 2, 1-120, 141-145, 164-250, 297-338.

under Probate Code section 4765, that petition must set forth objective facts showing that: 1) the petition is authorized under this part; 2) the grounds of the petition; and 3) the terms of any advance health care directive in question. To find otherwise would allow anyone to file a petition even though not listed under Probate Code section 4765, and would allow any individual or entity to use the trial court as a tool to forcibly medicate any person against his will and against the advice of his treating physicians based upon the petitioner's state-of-mind as opposed to objective facts set forth in the petition.

A. Respondent Still Cannot Show It Has Standing to Bring a Petition Under Probate Code Section 4765.

Respondent cites to no authority in support of its proposition that it has standing under the Probate Code to file a petition under section 4765 because Welfare and Institutions Code section 15600 allows Respondent "to take any action deemed necessary" regarding any dependent adult or elder. Respondent simply ignores the fact that Welfare and Institutions Code section 15600 does not control over the specific subsections of the Probate Code section 4670, *et seq.*, including section 4765, which delineates the limited entities and persons that may bring an action to

enforce the health care directive of any individual.

Respondent dismisses without comment that the California Elder Abuse and Dependent Adult Civil Protection Act, contained in Welfare and Institutions Code § 15600, *et seq.* (the “Protection Act”), “despite its remedial purposes does not displace or alter fundamental legal and procedural principles generally applicable to civil actions.” *Quiroz v. Seventh Ave. Center*, 140 Cal. App. 4th 1256, 1280 (2006). Those “legal and procedural principals” include the specific standing requirements contained in Probate Code section 4765. As set forth in Appellant’s Opening Brief, no basis for standing under Probate Code section 4765 exists. Hence, Respondent’s attempt to somehow bootstrap itself into standing through Welfare and Institutions Code section 15600(i) was then, and is now, without merit.

Respondent knew when it filed its Verified Petition that it is not one of the two governmental entities expressly specified as having the authority to file a petition under the HCDL: the “public guardian” or the “court investigator.” Prob. Code § 4765(f) and (g). Respondent is neither.

Respondent knew when it filed its Verified Petition that it is not a friend of Mr. Magney, nor an interested person listed under Probate Code section 48(a) and 4765. Under section 48, an “interested person” is defined

as: an heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding; any person having priority for appointment as personal representative; a fiduciary representing an interested person. Prob. Code § 48(a). Respondent is none of the above.

Respondent's assertion that it was reasonable and legally tenable for APS to believe it had standing turns the issue of standing, or the lack thereof, on its head. Respondent did not even attempt to plead in its Verified Petition that APS had standing or even how the court could consider that APS had standing.

The record shows that there can be only one reasonable conclusion for the Verified Petition omitting the necessary facts pursuant to Probate Code sections 4765 and 4767 showing that APS was authorized to file in its Petition under this part: Either Respondent never even considered the issue of standing until it was raised by Appellant as a bar to Respondent's assuming total medical control over her husband's medical decisions, or Respondent purposefully ignored it. Respondent simply believed, and continues to believe, that APS possesses total authority, irrespective of any individual's rights and/or treatment ordered by his treating physicians, "to take any action it deems necessary," no matter what that action is, and no

matter what an individual's health care directive and/or their surrogate and/or families direct. Unfortunately, the lower court that issued the Temporary Orders likely did not inquire as to the authority for APS to seek such relief as required under Probate Code section 4767, with all the attendant consequences on Appellant's husband and on Appellant. Moreover, the trial court was silent on this issue, but its ruling indicates that it used Ringwald's state of mind to establish facts in support of probable cause and then walked that back to assume standing.

B. Reasonable Cause Must Be Established by Objective Facts and Cannot Be Based Upon a Person's "State of Mind".

This is not a case in which the trial court used an incorrect criminal standard of probable cause rather than the correct civil standard. Probable cause is always determined by objective facts; it is not determined by an affiant's state of mind. Without admissible facts before a trial court, there can be no reasonable cause by any litigant to have filed any declaration nor Verified Petition. The trial court erred by not distinguishing between "objective facts" and "state of mind" and by allowing Respondent to determine what the facts were based upon Respondent's "state of mind" instead of by the court making its own independent finding of probable

cause based upon admissible evidence of what the objective facts were from the evidence produced at the hearing.

There is a significant difference between objective and admissible facts versus what the law calls state of mind. The Petition was verified as to the *facts* set forth. The Petition was not verified as being for Nurse Ringwald's state of mind. As a matter of law, there cannot be a court finding of probable cause regarding the specific allegations contained in the Verified Petition when the only testimony put on at hearing by Respondent was as to Nurse Ringwald's state of mind.

As set forth in Appellant's Opening Brief and not responded to by Respondent, the trial court erred in several ways:

First, there were never any facts established by Respondent at the hearing regarding the grounds stated in the petition, nor the terms of any advance health care directive in question. It is indisputable that Respondent repeatedly asserted to the court that the testimony of Ringwald with all its hearsay and inadmissible references to "facts" was not offered for the truth of the matters asserted, but only for Ringwald's state of mind. The trial court repeatedly said after every objection made by Appellant that it would not consider any of the unsubstantiated hearsay or inadmissible evidence, nor any state-of-mind evidence testified to by Nurse Ringwald, to prove the

facts. Yet, despite this assurance to Appellant, the trial court's ruling simply concluded that Nurse Ringwald's state of mind somehow proved the "facts" which established her probable cause for the filing of the Verified Petition and obtaining Temporary Orders.

For instance, the trial court identified eight "[f]acts known to petitioner." 3 AA 332-334. However, there was no testimony presented by Respondent nor any documents admitted by Respondent at the hearing establishing the first six as facts at all; they were only offered for the state of mind of Ringwald and not for the truth of the matter asserted. As to Items 7 and 8, they were established at hearing by Appellant and were *specifically omitted by Respondent* from the Verified Petition and Declaration in support of the Ex Parte Request for Temporary Orders.

Second, this error was demonstrated by the trial court's misuse of *Ortega v. Superior Court*, 135 Cal. App. 3d 244 (1982), in its ruling. The trial court failed to analyze the actual objective facts presented at the hearing to make its own determination as to probable cause for Respondent's Verified Petition. Not only does there have to be objective facts presented to the court, as opposed to state-of-mind evidence, but the court must make *its own* determination of reasonable cause based upon those facts rather than simply deferring to Respondent's state of mind to

establish the “[f]acts known to petitioner.”

In *Ortega*, one of the issues was whether or not the prosecution presented sufficient evidence at the preliminary hearing to support the magistrate’s holding order regarding the charged offenses. The appellate court opined that all that is necessary is that the prosecution present evidence (objective facts) in support of each element of the crime to the magistrate. All that was required to be presented to the magistrate was that the evidence as to each element be “such a state of facts as would lead a [person] of ordinary caution or prudence to believe and conscientiously entertain a strong suspicion of the guilt of the accused.” *Ortega, supra*, at 256. The “person” referred to by the court was the magistrate, not the witness, nor the prosecution. The appellate court *did not say* that probable cause could be established by the prosecution’s “state of mind” as to what the prosecution believed the evidence was nor that the prosecution’s “state of mind” sufficed to establish each and every element of the crime. When the trial court determined that Ringwald’s state of mind established the facts, it erred.

None of the cases cited by Respondent support the proposition that “reasonable” or “probable cause” can be established by state-of-mind evidence as opposed to objective facts. For instance, *Franklin Mint Co. v.*

Manatt, Phelps & Phillips, LLP, 184 Cal. App. 4th 313 (Cal. App. 2d Dist. 2010), was a trademark case. The court opined that the existence or absence of probable cause is a question of law to be determined by the court from the facts established in the case. This is an objective standard and does not take into account the subjective mental state of the defendant. *Id.*, at 313.

Silva v. Lucky Stores, Inc., 65 Cal. App. 4th 256 (Cal. App. 5th Dist. 1998), concerned a wrongful discharge case where an employer's liability rested upon the issue of whether there was a good faith termination. The court opined that there were three factual determinations relevant to the question of employer liability for wrongful discharge of an employee charged with misconduct: 1) whether the employer acted with good faith in making the decision to terminate; 2) whether the decision followed an investigation that was appropriate under the circumstances; and 3) whether the employer has reasonable *grounds* for believing the employee engaged in the misconduct. In that context alone, whether the employer acted reasonably in the discharge, the statements of others upon which he acted are admissible as to the issue of good faith and grounds for the discharge. *Id.*, at 263-265. This has nothing to do with "probable cause."

Nor does *People v. Smith*, 179 Cal. App. 4th 986 (Cal. App. 2d Dist.

2009), establish that state-of-mind or hearsay evidence suffices to establish probable cause. Smith was a criminal security fraud and grand theft matter involving eight victims. The prosecution sought admission of hearsay statements to prove the truth of the matters asserted, but after the lower court denied the admission of the hearsay, the prosecution then offered the same statements to show that the scheme was larger than just the eight listed victims to show the defendants' intent or common scheme or plan under Evidence Code § 1001(b). The court opined:

As discussed above, the prosecutor initially offered the documents for the truth of matters stated in them. He contended that information written on the agreements—the participants' addresses and the investment amounts—established that appellant violated California securities law by offering and selling unregistered securities in the state and that appellant defrauded these parties by taking their funds under false pretenses. However, the court correctly ruled that the documents would be inadmissible hearsay if offered for those purposes. The court concluded that the documents were nonetheless admissible to establish appellant's intent and the size and nature of the scheme—that appellant's operation encompassed more participants than the eight witnesses who testified and that the promised payments could not be made unless greater and greater numbers were induced to participate. Thus, our review focuses on whether the documents supported the nonhearsay purposes identified by the court and whether those purposes were relevant to an actual issue in dispute.

Id., at 1003-1004.

Respondent's intent is not at issue here. The operative facts sworn to in the Verified Petition and Declaration in support of the Temporary Orders

were at issue before the trial court and on appeal to this court.

In this matter, the Verified Petition was filed allegedly to enforce Appellant's husband's AHCD, his wishes, and his treating physician's treatment plan. It is indisputable that Respondent presented no objective facts supporting what was attested to as "true" in the Verified Petition.

Although Respondent did not provide objective facts in support of its Verified Petition, Appellant still called Dr. Phan, Mr. Magney's treating and primary physician, who directly contradicted what Respondent attested to in its Verified Petition. Dr. Phan's testimony demonstrated that Respondent purposefully withheld information from the lower court (which signed the Temporary Orders) when it filed the Verified Petition, and that Respondent manipulated the information it did provide to the lower court to ensure that it obtained the Temporary Orders. The only objective facts presented at the hearing on "probable cause" were those presented by Appellant made to protect and enforce her husband's actual health care choices.

During the hearing, the trial court repeatedly referenced that the issue before it was similar to that of testing a search warrant: what were the objective *facts* attested to in the Verified Petition? Had the trial court followed through with whether or not such objective facts as set forth in the Verified Petition actually existed and were presented at the hearing, the trial

court would have been forced to conclude that there was no reasonable cause for APS to have brought the Verified Petition. A *de novo* review by this court of the actual evidence (objective facts) submitted to the trial court must conclude that there were no objective facts submitted by Respondent that supports a finding of probable cause to have filed its Verified Petition and obtain the Temporary Orders.

1. Mr. Magney's Clear Wishes Were Expressed in His Advanced Health Care Directive, to His Treating Physicians and to Appellant.

In addition to Mr. Magney's Advanced Health Care Directive, the only admissible evidence before the trial court regarding Mr. Magney's medical choices regarding the treatment he declined was testimony by Dr. Stephanie Phan ("Dr. Phan"), who stated that Mr. Magney's wishes to her were clear and that she found that Mr. Magney had the capacity to make his own medical decisions, and by the declaration by Appellant which was not objected to by Respondent. Dr. Phan testified that she was Mr. Magney's Treating Physician, that not only did Mr. Magney have medical capacity to make his own health care decision, but he also was very clear that he did not want to be treated for his heart infection and wanted the heart antibiotics stopped. She testified that Mr. Magney's decisions were consistent with his

health care directive and Appellant's understanding of Mr. Magney's long held wishes. She testified that his decision was consistent with the advice, treatment and diagnosis by Mr. Magney's team of Treating Physicians (herself, Dr. Zazueta and Dr. Sarna) due to the standard of care that they are duty bound to follow and because there was no chance for any meaningful recovery given Mr. Magney's concomitant medical problems and his refusal of surgery.

2. Medical Decision Making Capacity Is Determined by Medical Doctors.

The HCDL specifically excludes from its provisions those patients, like Mr. Magney, who are deemed by their treating physicians to be competent at the time a treatment decision is made. Prob. Code § 4658. As fully discussed in Appellant's Opening Brief, the issue of medical capacity is determined by an individual's treating/primary doctor.

In this matter, Dr. Phan was Mr. Magney's Treating Physician during his hospitalization. Respondent provided no admissible evidence to dispute Dr. Phan's determination that Mr. Magney had medical capacity to make his own medical decision when the antibiotics for endocarditis which he had been objecting to were stopped. As testified to by Nurse Ringwald at the hearing, Dr. Phan's determination as to Mr. Magney's capacity and his

choices made to his Treating Physician was purposefully withheld from the trial court because Ringwald believed she would not have obtained the Temporary Orders had she not omitted Dr. Phan's capacity finding from the trial court. RT 168-196. Respondent produced no admissible records, no testimony by any Dr. Francisco, no testimony by any Tanya Tom, nor were their purported declarations admitted at hearing after Appellant filed her Objections and Motion to Strike.

3. The "Best Interests" of the Patient Is Not Relevant Unless There Is No AHCD or the Patient is Silent or Unclear.

Respondent asserts that it can legally intervene with a valid health care directive and/or choices made by a patient if Respondent believes such choices made by a patient aren't in the patient's best interest. Respondent did not seek to obtain total medical control over Mr. Magney based upon any actual failure to follow through with Mr. Magney's health care directive, but merely crafted its Verified Petition and Request for Temporary Orders alleging a violation of Mr. Magney's health care directive and wishes in order to obtain the Temporary Orders.^{2/} RT 168-

^{2/} No testimony regarding any investigation other than Ringwald's personal one was ever raised by Respondent at the hearing. While there was testimony that Ringwald brought a sheriff's deputy to the hospital, there

196. Respondent is wrong, and Respondent's position is flatly contradicted by the Health Care Decision Law.

While Appellant acknowledges that Respondent can seek a conservatorship over Appellant's husband, if her husband lacks capacity and if Appellant is not able to serve as his nominated conservator for any reason, only a named party under Probate Code sections 4765 and 4766 can file an HCDL Petition when a directive *is not being followed* or when the patient's wishes are unclear (to either the surrogates or doctors). Here, the undisputed evidence was that the patient was very clear to his Treating Physicians, to his wife, and was supported by his own health care directive.

Respondent now asserts that the Verified Petition was only filed to "preserve the status quo." ROB 11. However, far from preserving the status quo, Respondent actually changed the status quo and forced unwanted medical treatment upon Mr. Magney in order for Ringwald to do her own personal investigation of her own unsubstantiated allegations concerning Appellant, which was based upon APS' belief that Mr. Magney's decisions were wrong, Mr. Magney's doctors were wrong, and

was nothing presented that he found any evidence at all in support of Respondent's baseless allegations regarding Appellant. Even though a conservatorship petition was filed and heard before the same trial court prior to the ruling in this matter, that conservatorship petition was dismissed by the court after hearing.

that Appellant was wrong to support her husband's choices.

What, in the opinion of Respondent, is in Mr. Magney's best interest is irrelevant where Mr. Magney's wishes were made clear to his Treating Physicians and supported by his Treating Physician's finding that Mr. Magney possessed the medical capacity to make his health care decisions. These clear wishes were also consistent with his own Advance Health Care Directive, which was written at a time when there was no question as to Mr. Magney's capacity.

IV. CONCLUSION.

Respondent's Verified Petition and Ex parte Request for Temporary Orders which resulted in Respondent's obtaining total control of Appellant's husband's medical choices was commenced without reasonable or probable cause. Reasonable or probable cause must be based upon objective facts and not someone's state of mind. It was error for the trial court to conclude that probable cause for the Petition could be based upon Respondent's state of mind and not upon objective facts provided to the court at hearing.

The end-run by Ringwald and Humboldt County Adult Protective Services around Appellant's husband's choices as well as the diagnosis and treatment of his team of Treating Physicians at St. Joseph Hospital resulted

in the denial of Dick R. Magney's most fundamental of rights, which are his health care wishes, as expressed to his own physicians, to his wife, and by his own health care directive. It also resulted in the denial of the course of treatment developed by his own doctors. *And all of this was accomplished without any actual objective evidence*, which is precisely why none was presented to the trial court. The trial court erred when it found that Respondent's state of mind could prove facts to establish reasonable cause.

As discussed above and in Appellant's Opening Brief, the emotional pain Mr. Magney and Appellant were subjected to by Respondent's misconduct is referenced in the record. The Court Investigator Report even described what was occurring to Mr. Magney as "inhumane" and what was happening to Appellant as she was at her husband's hospital bedside was "appalling."

Mr. Magney remains terminally ill, but because of Respondent's actions, by Respondent interfering with Mr. Magney's predetermined health care directives, his directives made expressly to his treating physicians and contemporaneous health care decisions, Mr. Magney is now confined to a nursing home dying slowly and in intense pain, and fearful about when or if Respondent will again hijack his health care decisions.

This is not an isolated case: Respondent has interfered with the

health care decisions of others and had them reversed and has said that it will do so again.

Mr. Magney and Appellant are elderly and on social security. Because of Respondent's actions, Appellant and her dying husband have suffered a crushing financial burden having to defend against Respondent's actions and all of the ensuing motions, hearings, and proceedings, all of which were based upon Respondent's fabrications and deliberate, intentional omissions of the true facts. This crushing financial burden has been made even greater due to the companion conservatorship case, which was subsequently dismissed, and by having to appeal the trial court's ruling so that Appellant's husband can pass away in peace and with dignity – which is his most fundamental of rights. Appellant respectfully requests that this court reverse the trial court's ruling and award Appellant attorney fees and costs on appeal.

Dated: February 25, 2016

HARLAND LAW FIRM LLP

By: /s/ Allison G. Jackson
Allison G. Jackson
Attorneys for Appellant JUDITH C.
MAGNEY

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1))

The text of this brief consists of 5,640 words as counted by the Corel WordPerfect version X6 word-processing program used to generate this brief.

Dated: February 25, 2016

HARLAND LAW FIRM LLP

By: /s/ Allison G. Jackson
Allison G. Jackson

Attorneys for Appellant JUDITH C.
MAGNEY

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Humboldt, over the age of 18 years, and not a party to this action. My business address is 622 H Street, Eureka, California, 95501-1026.

On this date, I served the following on the interested parties listed below:

APPELLANT'S REPLY BRIEF

(By Mail) I placed a copy of each document in an envelope for each addressee, sealed the envelope and, with postage thereon fully prepaid, placed each envelope for deposit with the U.S. Postal Service at Eureka, California.

I am readily familiar with this firm's practice for processing items for mailing or overnight delivery; each item shall be deposited with the U.S. Postal Service or with an overnight delivery service this same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: February 25, 2016

/s/ Paul Heagerty
Paul Heagerty

HUMBOLDT SUPERIOR COURT
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