

No. _____

In The
Supreme Court of the United States

PATRICK J. GILLIS,

Petitioner,

vs.

DAVID GILLIS, as Personal Representative of
the Estate of Shirley Mary Agnes Gillis and in his
capacity as beneficiary of the Shirley Mary Agnes Gillis
Revocable Living Trust, u/t/a/d March 24, 2014,

Respondent.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of Oregon**

PETITION FOR WRIT OF CERTIORARI

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RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

In accordance with the Due Process Clause of the Fourteenth Amendment of the United States Constitution, are state courts directly responsible for noticing parties with standing in cases before them about hearings in those cases, thereby ensuring that all parties have an opportunity to be heard, present objections, and confront and cross-examine adverse witnesses?

LIST OF PARTIES

All parties *do not* appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Maria Christine Soblom
Timothy Gillis
Mariellen Rondeau
Michael Gillis
Mary Humphreys
Anne Byer
Catherine King
Margaret Allison
Donald Gillis, Jr.
Charlie White
Respondents on Review

STATEMENT OF RELATED CASES

Gillis v. Gillis is a post-judgment probate case that concerns a post-judgment attorney fees hearing (held on March 1, 2017) in which the Petitioner, Patrick J. Gillis, was surcharged by a Multnomah County, Oregon, probate court, nearly \$400,000 in attorney fees payable to other parties in the case despite the fact that he was not noticed about the aforementioned hearing by the court, evidenced by the court's own

STATEMENT OF RELATED CASES – Continued

statements as recorded by the court transcriptionist for that hearing (relevant pages of the transcript appear in the Appendix of this Writ). The Multnomah County Circuit Court Number for this case is: 15PB02258.

Upon learning of the Multnomah County Probate Court's actions, Petitioner appealed that court's decisions to the Court of Appeals of the State of Oregon (Court of Appeals Number A164384), which, in a per curium decision, denied in part and dismissed in part Petitioner's appeal.

Petitioner then appealed the Court of Appeals of the State of Oregon's decision to the Supreme Court of the State of Oregon (Supreme Court Number 068140), which affirmed, without comment, the Court of Appeals' decision.

Due to the fact that neither the Court of Appeals of the State of Oregon nor the Supreme Court of the State of Oregon offered opinions on the merits of the case, Petitioner was prompted to file this Writ of Certiorari with the United States Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review merits appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was January 21, 2021.

A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: November 4, 2021, and a copy of the order denying rehearing appears at Appendix G.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause of the Fourteenth Amendment of the U.S. Constitution:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner's Fourteenth Amendment Due Process Rights were violated by a state court that did not notice him nor conduct "reasonable followup measures," to ensure he was noticed about a hearing in which significant monetary damages were assessed against him.

Thirty-seven years ago, this Court held in *Cleveland Board of Education v. Loudermill*¹ that "the right of due process 'is conferred, not by legislative grace, but

¹ *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985).

by constitutional guarantee.’’ Over 90 years ago, this Court held in *Coffin Brothers & Co. v. Bennett*² that it is a violation of due process of law for a state to enforce a judgment against a party to a proceeding without having given that party an opportunity to be heard sometime before final judgment is rendered. In years that followed, this Court buttressed what it set forth in *Coffin Brothers* by establishing in *Mullane v. Central Hanover Bank & Trust Co.*³ what was effectually a “three-pronged framework” of requirements that ensure that a party’s due process rights are protected.

In *Mullane*, this Court rendered that “procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.” And in *Carey v. Piphus*⁴ and *Mathews v. Eldridge*⁵ this Court described that the required elements of due process are those that “minimize substantively unfair or mistaken deprivations” by enabling parties to contest the basis upon which a state proposes to deprive them of protected interests. The core of those required elements – first, that parties be notified about a hearing in which their protected interests are at stake; second, that they be afforded the opportunity to attend and participate in a hearing in which their protected interests are at stake; and third, that that hearing is held before

² *Coffin Brothers & Co. v. Bennett*, 277 U.S. 29 (1928).

³ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

⁴ *Carey v. Piphus*, 435 U.S. 247, 259 (1978).

⁵ *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976).

an impartial tribunal – were clearly referenced and articulated in *Fuentes v. Shevin*⁶ (and subsequently in *Carey v. Piphus*,⁷ *Marshall v. Jerrico, Inc.*,⁸ and *Nelson v. Adams*⁹); specifically, this Court declared, “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

This petition presents a clear case of what is indisputable – that on March 1, 2017, a circuit court in Multnomah County, Oregon, held a post-judgment hearing in a probate case in which the assignment of attorney fees was argued before the court and then adjudicated by the court as to the assignment of those fees. What is also indisputable is that the party to the case who was assessed the vast majority of the parties’ attorney fees – nearly \$400,000 – was not present at the March 1, 2017, hearing, nor was he represented by counsel at that hearing. That party, the petitioner, establishes in this petition, that the Oregon circuit court did not notice the pro se petitioner nor did it conduct any “reasonable followup measures” to ensure his notification about the hearing, which, pursuant to the aforecited U.S. Supreme Court case law, directly violated

⁶ *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

⁷ *Carey v. Piphus*, 435 U.S. 247, 266-67 (1978).

⁸ *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

⁹ *Nelson v. Adams*, 529 U.S. 460 (2000).

his procedural due process rights that are inherent in the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

The important constitutional question petitioner presents for this Court's consideration in this petition is: Are state courts directly responsible for noticing parties with standing in cases before them about hearings in those cases, thereby ensuring that all parties have an opportunity to be heard, present objections, and confront and cross-examine adverse witnesses?

*Mullane*¹⁰ (and *Richards v. Jefferson County*¹¹ and *Goldberg v. Kelly*¹²) are especially important cases as they pertain to this petition because this Court, in those cases, held that if a court, upon learning that an attempt to deliver notice has failed, must take "reasonable followup measures" to ensure a party with standing has been notified. As will be revealed in the certified transcript of the March 1, 2017, Oregon circuit court hearing in question, the trial court did not undertake *any* "reasonable followup measures" to ensure that petitioner had been noticed about that hearing.

Affording all parties to a case the opportunity to participate in a hearing in which their protected interests are at stake was addressed by this Court in

¹⁰ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

¹¹ *Richards v. Jefferson County*, 517 U.S. 793 (1996).

¹² *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

*Mathews v. Eldridge*¹³ and *Baldwin v. Hale*¹⁴ when the Court held, “parties whose rights are to be affected are entitled to be heard.” This Court also held that the right to be heard is a “basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment. . . .”

As this Court will learn in forthcoming pages, the Oregon circuit court, contrary to *Mullane*,¹⁵ *Richards*¹⁶ and *Goldberg*,¹⁷ did not take “reasonable followup measures” to ensure petitioner was noticed about a hearing where his protected interests were at stake; indeed, a hearing was held where *no one* was present to “confront and cross-examine [petitioner’s] adverse witnesses.” The Oregon circuit court’s negligence in not taking “reasonable followup measures” that would have ensured petitioner his right to “confront and cross-examine adverse witnesses” at a hearing in which his protected interests were at stake was a decision contrary to U.S. Supreme Court case law, and also contrary to Oregon Supreme Court case law, most

¹³ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

¹⁴ *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863).

¹⁵ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

¹⁶ *Richards v. Jefferson County*, 517 U.S. 793 (1996).

¹⁷ *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

notably *Weinacht et ux. v. Bower*,¹⁸ in which the Oregon Supreme Court asserted, “‘Due process,’ as used in the Federal Constitution, implies that a person whose property rights are affected is entitled to his ‘day in court.’ It means that no person shall be deprived of his property without notice and an opportunity to be heard. The courts, with unanimity, have held that the property owner is entitled to notice and an opportunity to be heard at some stage of the proceedings.”

This Court recently held, in *Williams v. Pennsylvania*, that confronting and cross-examining adverse witnesses is an imperative due process right: “In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.”¹⁹ Forty years ago, in *Greene v. Lindsey*,²⁰ this Court articulated a constitutional minimum, that due process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

Added to the fact that the Oregon circuit court did not ensure petitioner’s due process right to “confront and cross-examine adverse witnesses” was (and is) the fact that petitioner is not a resident of the state of

¹⁸ *Weinacht et ux. v. Bower*, 140 Or 527, 533, 14 P.2d 622 (1932).

¹⁹ *Williams v. Pennsylvania*, 579 U.S. ___, No. 15-5040, slip op. at 12-13 (2016).

²⁰ *Greene v. Lindsey*, 456 U.S. 444, 449 (1982).

Oregon (where the post-judgment hearing was held); he was on March 1, 2017, (and is today), a resident of the state of New York. With respect to nonresidents, this Court clearly established in *McDonald v. Mabee*²¹ that no person can be deprived of property rights in a case in which he neither appeared nor was served nor effectively made a party. As will be evidenced in this petition, petitioner was not present (nor was counsel on his behalf), nor was he served, nor was he effectively made a party at a hearing in which an Oregon circuit court heard arguments, accepted evidence into the record, and then, based on the non-confronted and non-cross-examined arguments and evidence that was presented, adjudicated decisions that were averse to petitioner's property rights.

The March 1, 2017 hearing in question

As it pertains to this petition, the important constitutional question concerning an Oregon circuit court's decision to ignore/bypass procedural due process requirements by failing to ensure that all parties with standing in the case before it were noticed about a post-judgment hearing held on March 1, 2017, is redressed by aforecited case law from the U.S. Supreme Court and the Supreme Court of the State of Oregon; evidence for the circuit court's decision to ignore/by-pass procedural due process requirements is revealed

²¹ *McDonald v. Mabee*, 243 U.S. 90 (1917).

in the certified transcript²² of the March 1, 2017, circuit court hearing in question.

The beginning of the March 1, 2017, hearing transcript reveals discussion among the trial court judge and attorneys for three of the parties, an attorney for the conservator, and petitioner's former attorney (who had been discharged in mid-February, 2017, and therefore was not representing petitioner at the hearing). The court, by its own statements, reveals that it did not directly provide notice to nor contact petitioner about his attendance at the hearing that day.

"We've been monitoring the phones, we haven't gotten any calls from him [petitioner] today," the court announces at the outset of the hearing. "And my understanding just from basically what he said in his motion was partially one of the reasons why he discharged his attorneys was because of a motion that was filed to allow him to attend by telephone, *so my assumption is he's not asking to attend by telephone.*" This statement by the court²³ is crucial because what the court failed to include in its statement – specifically, that it never rendered a decision on the motion it references.²⁴ And because the court conspicuously failed to acknowledge that no communication(s) from

²² See Appendix H, certified transcript of March 1, 2017, Oregon Circuit Court hearing, pages 5-6 and 12, also includes cover page and transcriber's declaration page.

²³ See Appendix H, certified transcript of March 1, 2017, Oregon Circuit Court hearing, page 5, lines 7-11.

²⁴ No response from the court to the motion it cites is listed or can be located in the case file.

the court to the petitioner with regard to this motion had ever occurred,²⁵ the court could not possibly have known whether or not petitioner had wanted to attend future hearings via telephone. The court’s “assumption” was incorrect; had the court taken “reasonable followup measures,” consistent with *Mullane*,²⁶ *Richards*²⁷ and *Goldberg*,²⁸ including issuing a response to petitioner’s motion, then it would not have drawn the incorrect assumption that it did. Moreover, when the court was notified by petitioner’s former counsel in mid-February, 2017, that they were no longer representing petitioner, the court failed to provide notice(s) to the petitioner, who was now pro se, nor communicate with him in any way, regarding upcoming hearings.²⁹

The court’s “assumption” is further discredited when, after stating its assumption, the court then queries attorneys representing other parties in the case about petitioner’s plans to either attend, or not attend, the hearing. This dialogue reveals that the court had not only not provided petitioner notice and the opportunity to participate in the hearing, but that the court,

²⁵ No documentation from the court to the pro se petitioner noticing petitioner about upcoming hearings, nor any documentation inviting petitioner to attend hearings via telephone is listed or present in the case file.

²⁶ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

²⁷ *Richards v. Jefferson County*, 517 U.S. 793 (1996).

²⁸ *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

²⁹ No documentation/communication(s) from the court to the petitioner indicating that the court had noticed petitioner about upcoming hearings is listed or present in the case file.

more than somewhat disconcertingly, tried to pass that essential procedural due process responsibility off on attorneys for other parties in the case. Regarding this important point, the court said, "But I want to ask each of the parties, the lawyers here, if any of you are aware of a request by him [petitioner] to attend this hearing by telephone, because if you are aware of that, then I want to make sure we try to get him on the line."³⁰ Petitioner's former attorney (Mr. Cartwright) responds by saying, "We are not aware of any such request, and we have had no meaningful contact with Mr. Gillis since [mid-February, 2017, when] we were discharged."³¹

Next, the attorney for the conservator, (Mr. Owen), responds to the court by saying, "I'm going by memory. I'm not going to pull my phone out, I believe I attempted at least once if not – I know I sent him at least two emails, one of which asking if he was attending – intending to appear or appear by phone, and I received no response. But that's my memory, I can check if the court wants me to."³² Why the attorney for the conservator would have in his mind that it was *his responsibility* to notice the petitioner about a post-judgment hearing is an interesting question, and an equally disturbing one. It begs another disturbing question: Since

³⁰ See Appendix H, certified transcript of March 1, 2017, Oregon Circuit Court hearing, page 5, lines 12-16.

³¹ See Appendix H, certified transcript of March 1, 2017, Oregon Circuit Court hearing, page 5, lines 18-20.

³² See Appendix H, certified transcript of March 1, 2017, Oregon Circuit Court hearing, page 5, lines 22-25, and page 6, lines 1-4.

when does the responsibility for noticing parties about hearings in a probate case belong to the attorney representing the conservator? Did the court assign the attorney representing the conservator this responsibility? The answer to that question is unknown; however, why did the attorney for the conservator, at the outset of this hearing, readily claim that he had tried to notice the petitioner about the hearing? Needless to say, but important to point out nevertheless, there is no case law in the state of Oregon, nor is there U.S. Supreme Court case law (at least none petitioner can identify, despite thorough research), that authorizes a court to assign the responsibility for noticing parties to an attorney representing an (outside) party in that case. What is inherent (and indisputable) in an abundance of U.S. Supreme Court case law³³ is that *it is the court's responsibility* – solely – to provide notice to parties with standing in a case about hearings in those cases.

What is also highly disturbing about the attorney for the conservator's statements to the court about his attempts to notice the petitioner is that his statements were disingenuous and highly misleading. As a transcript³⁴ from another post-judgment hearing reveals, this attorney contradicted the representations he made to the court on March 1, 2017, when he said the

³³ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972); *Carey v. Piphus*, 435 U.S. 247, 266-67 (1978); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *Nelson v. Adams*, 529 U.S. 460 (2000).

³⁴ See Appendix I, certified transcript of February 6, 2019, Oregon Circuit Court hearing.

following: “He’s [petitioner] not somebody that’s ever agreed to electronic service, but I did put in my certificate that I emailed him a copy of that on Monday. Come to find out the age-old attachment was not attached. So I have to correct that and say I emailed it to him Tuesday morning, but I did mail it, which is required.”³⁵

So this Court has a better understanding about the relationship between the petitioner and Mr. Owen, the two have never spoken by telephone, and met only once (briefly in 2016) in the office of petitioner’s former attorney, a meeting that was little more than an introduction. Mr. Owen was correct when he represented to the court on February 6, 2019, that, “He’s [petitioner] not somebody that’s ever agreed to electronic service,”³⁶ because Mr. Owen knew on that day (as he did on March 1, 2017) that, following the discharge of petitioner’s attorney (in mid-February, 2017), that any communications directed to the petitioner had to be by U.S. mail *only*. Mr. Owen’s claims to the court on March 1, 2017, that “I know I sent him at least two emails, one of which asking if he [petitioner] was attending – intending to appear or appear by phone, and I received no response. But that’s my memory, I can check that if the court wants me to.”³⁷ As the transcript further

³⁵ See Appendix I, certified transcript of February 6, 2019, Oregon Circuit Court hearing, page 7, lines 2-8.

³⁶ See Appendix I, certified transcript of February 6, 2019, Oregon Circuit Court hearing, page 7, lines 2-3.

³⁷ See Appendix H, certified transcript of March 1, 2017, Oregon Circuit Court hearing, page 5, lines 24-25 and page 6, lines 1-4.

reveals, the court, regrettably, did not ask Mr. Owen to “check that;” in fact, the court responded to Mr. Owen’s claim this way: “I just want to have the record – so I’m not going to say that you affirmatively represented you did it twice, but you did it at least once, right?”³⁸ Mr. Owen responded, “Correct, Your Honor.”³⁹

Mr. Owen was not correct. Evidenced by his own representation to the court on February 6, 2019, he confirmed that petitioner “was not somebody that’s ever agreed to electronic service,”⁴⁰ yet he (mis)represented to the court on March 1, 2017, that petitioner had not responded to “at least two emails” that he (Mr. Owen) claimed he had sent him regarding the March 1, 2017, hearing.

But even if Mr. Owen’s (mis)representations are taken at face value, the dialogue between the court and Mr. Owen is (again) very disturbing. Why would the court *defer* to the attorney for the conservator to determine whether the petitioner had indicated to *him* whether he was going to attend the hearing? The \$64,000 question, to borrow a well-worn euphemism, is: Why did the court need to ask the attorney for the conservator to find out if that attorney had noticed the petitioner? The answer to this question is quite obvious: The court *did not* need to confer with the attorney

³⁸ See Appendix H, certified transcript of March 1, 2017, Oregon Circuit Court hearing, page 6, lines 5-7.

³⁹ See Appendix H, certified transcript of March 1, 2017, Oregon Circuit Court hearing, page 6, line 8.

⁴⁰ See Appendix I, certified transcript of February 6, 2019, Oregon Circuit Court hearing, page 7, lines 2-3.

for the conservator if the court had followed standard procedural due process requirements and noticed the petitioner directly. It bears repeating that no such notice by the court to the petitioner was made, nor is there any document(s) that can be located in the case file confirming same; simply put, it is incontrovertible that the court never noticed the petitioner about the hearing, and in not doing so, the court violated petitioner's procedural due process rights inherent in the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

The court's conclusion to the (mis)representations it heard from the attorney for the conservator? "My conclusion is that he [petitioner] is then thereby waiving his appearance at this proceeding."⁴¹ Ouch.

REASONS FOR GRANTING THE PETITION

The petition should be granted because a state court clearly violated the Due Process Rights protections guaranteed to petitioner under the Fourteenth Amendment of the United States Constitution.

How the Oregon circuit court could reach the conclusion that it did and proceed with the hearing given that it had made no effort *of its own* to notice petitioner about the March 1, 2017, hearing flies in the face,

⁴¹ See Appendix H, certified transcript of March 1, 2017, Oregon Circuit Court hearing, page 12, lines 11-12.

especially, of what this Court, in *Mullane*,⁴² *Richards*,⁴³ and *Goldberg*,⁴⁴ held: That, upon learning that an attempt to deliver notice has failed (which, even if Mr. Owen's (mis)representations to the court on March 1, 2017, are to be believed, he did inform the court that his efforts to reach petitioner had failed), a court must take "reasonable followup measures" to ensure a party with standing has been noticed. As was revealed in the certified transcript of the March 1, 2017, hearing, the Oregon circuit court had not undertaken *any* "reasonable followup measures" whatsoever.

CONCLUSION

For the foregoing reasons, and pursuant to the aforesited case law and the Due Process Clause of the Fourteenth Amendment of the United States Constitution, petitioner respectfully requests that a writ of certiorari be granted.

Respectfully submitted,
PATRICK J. GILLIS
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Port Chester, NY 10573
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patrickjgillis@aol.com

⁴² *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

⁴³ *Richards v. Jefferson County*, 517 U.S. 793 (1996).

⁴⁴ *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

App. 1

APPENDIX A

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

**PATRICK GILLIS,
Appellant,
Petitioner on Review,**

v.

**DAVID GILLIS, as Personal Representative of the
Estate of Shirley Mary Agnes Gillis and in his capacity
as beneficiary of the Shirley Mary Agnes Gillis
Revocable Living Trust, u/t/a/d March 24, 2017,
Respondent,
Respondent on Review,**

and

**MARIA CHRISTINE SOBLOM et al.,
Respondents below.**

**Court of Appeals
A164384
S068140**

ORDER DENYING REVIEW

Upon consideration by the court.

The motion of petitioner on review to recall the appellate judgment is granted. The appellate judgment issued by the State Court Administrator on October 12, 2020, is recalled.

App. 2

The court has considered the petition for review and
orders that it be denied.

Martha L. Walters
Chief Justice, Supreme Court
Filed 1/21/2021 8:13 AM

c: Zachariah H Allen
Patrick Gillis

ORDER DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State
Court Administrator, Records Section, Supreme Court
Building, 1163 State Street, Salem, OR 97301-2563

App. 3

APPENDIX B

**IN THE COURT OF APPEALS
OF THE STATE OF OREGON**

**PATRICK GILLIS,
Appellant,
v.**

**DAVID GILLIS, as Personal Representative of the
Estate of Shirley Mary Agnes Gillis and in his capacity
as beneficiary of the Shirley Mary Agnes Gillis
Revocable Living Trust, u/t/a/d March 24, 2017,
Respondent,**

**and
MARIA CHRISTINE SOBLOM et al.,
Respondents below.
Multnomah County Circuit Court
15PB02258**

A164384

**APPELLATE JUDGMENT AND
SUPPLEMENTAL JUDGMENT**

(Filed Oct. 12, 2020)

Katherine E. Tennyson, Judge
Submitted on December 07, 2018.

Attorney for Appellant: Patrick J. Gillis pro se.

Attorney for Respondent: Zachariah Allen.

Before Ortega, Presiding Judge; Egan, Chief Judge, and
Powers, Judge.

**Appeal of March 3, 2017, supplemental judgment
affirmed; appeal of March 17, 2017, supplemental
judgment dismissed.**

App. 4

**DESIGNATION OF PREVAILING PARTY
AND AWARD OF COST**

Prevailing party: Respondent
[X] Costs allowed, payable by Appellant.

MONEY AWARD

Creditor: David Gillis

Attorney: Zachariah H. Allen, 805 SW Broadway
Ste 470, Portland OR 97205

Debtor: Patrick Gillis

Costs: \$491.00

Total Amount: \$491.00

Interest: Simple, 9% per annum, from the date of this appellate judgment.

Appellate Judgment Court of Appeals

Effective Date: October 12, 2020 (seal)

**APPELLATE JUDGMENT
AND SUPPLEMENTAL JUDGMENT**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section, Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

APPENDIX C

**IN THE COURT OF APPEALS
OF THE STATE OF OREGON**

PATRICK GILLIS,

Appellant,

v.

DAVID GILLIS, as Personal Representative of the Estate of Shirley Mary Agnes Gillis and in his capacity as beneficiary of the Shirley Mary Agnes Gillis Revocable Living Trust, u/t/a/d March 24, 2017,

Respondent,

and

MARIA CHRISTINE SOBLOM et al.,

Respondents below.

Multnomah County Circuit Court No. 15PB02258

Court of Appeals No. A164384

ORDER DENYING RECONSIDERATION

Appellant petitions for reconsideration of the court's decision dated June 10, 2020. The court has considered the petition and orders that the petition is denied.

The petition for reconsideration is denied.

Darleen Ortega
Presiding Judge, Court of Appeals
Filed 7/16/2020 10:10 AM

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c: Patrick Gillis
Zachariah H Allen
ej

ORDER DENYING RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State
Court Administrator, Records Section, Supreme Court
Building, 1163 State Street, Salem, OR 97301-2563

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APPENDIX D

FILED: June 10, 2020

**IN THE COURT OF APPEALS
OF THE STATE OF OREGON**

PATRICK GILLIS,

Appellant,

v.

DAVID GILLIS, as Personal Representative of the
Estate of Shirley Mary Agnes Gillis and in his capacity
as beneficiary of the Shirley Mary Agnes Gillis
Revocable Living Trust, u/t/a/d March 24, 2017,

Respondent,

and

MARIA CHRISTINE SOBLOM et al.,

Respondents below.

Multnomah County Circuit Court

15PB02258

A164384

Katherine E. Tennyson, Judge

Submitted on December 07, 2018.

Patrick J. Gillis filed the briefs *pro se*.

Bonnie Richardson and Zachariah Allen filed the brief
for respondent.

Before Ortega, President Judge, and Egan, Chief Judge, and Powers, Judge.

PER CURIAM

Appeal of March 3, 2017, supplemental judgment affirmed; appeal of March 17, 2017, supplemental judgment dismissed.

**DESIGNATION OF PREVAILING PARTY
AND AWARD OF COSTS**

Prevailing party: Respondent

- No costs allowed.
- Costs allowed, payable by Appellant
- Costs allowed, to abide the outcome on remand, payable by

PER CURIAM

This case involves a notice of appeal from two supplemental judgments relating to an award of attorney fees in an underlying case involving appellant's conduct as a trustee of a revocable trust. The first supplemental judgment was entered on March 3, 2017. The second supplemental was signed and entered by the trial court on March 17, 2017. Appellant filed the notice of appeal of both supplemental judgments on March 16, 2017. As explained before, because we conclude that the notice of appeal as to the March 17 supplemental judgment was premature, we further conclude that we lack jurisdiction to consider it. And because

appellant raises no assignments of error with respect to the March 3 supplemental judgment, we affirm that supplemental judgment without discussion.

As a general rule, a judgment becomes appealable when it is entered in the trial court register, and a notice of appeal from a judgment that has not been entered in the register is jurisdictionally defective. *State v. Ainsworth*, 346 Or 524, 535, 213 P3dA 1225 (2009); *see* ORS 18.082(1)(c) (providing that, on entry, a judgment “[m]ay be appealed in the manner provided by law”).¹ In this case, appellant filed the notice of appeal of the March 17 supplemental judgment before the court had either signed or entered the supplemental judgment. The notice of appeal of the March 17 supplemental judgment therefore is premature, and we lack jurisdiction to consider it.

Turning to the supplemental judgment that we do have jurisdiction to consider, appellant has not assigned error to any specific trial court ruling that resulted in the March 3 supplemental judgment. *See generally John Hyland Const., Inc. v. Williamson &*

¹ An exception exists for a judgment that has been signed but not entered, where the record shows that the court intended to enter an appealable judgment. *Guembes v. Roberts*, 286 Or App 471, 472, 398 P3d 507 (2017) (holding that no amended notice of appeal is required to confer jurisdiction on the Court of Appeals to consider a notice of appeal from a judgment that is signed by the court but not yet entered); *see also* ORS 19.270(5) (“Notwithstanding the filing of a notice of appeal, the trial court has jurisdiction * * * No enter in the trial court register a judgment or order that the trial judge signed before the notice of appeal was filed[.]”).

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Bleid, Inc., 287 Or App 466, 470-73, 402 P3d 719 (2017) (discussing at length both the requirements for proper assignments of error and the consequences for lack of compliance with those requirements). Rather, his challenges focus squarely on issues underlying the March 17 supplemental judgment. Thus, because none of the three assignments of error raised in the opening brief challenge that March 3 supplemental judgment, we affirm that judgment without discussion).

Appeal of March 3, 2017, supplemental judgment affirmed; appeal of March 17, 2017, supplemental judgment dismissed.

APPENDIX E
IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Probate Department

PATRICK GILLIS, individually) Case No.
and in his capacity as qualified) 15PB02258
beneficiary and successor) SUPPLEMENTAL
trustee of the Shirley Mary) JUDGMENT AND
Agnes Gillis Revocable Living) MONEY AWARD
Trust, u/t/a/d March 24, 2014,) AGAINST PATRICK
Petitioner,) GILLIS
)
v.) (Filed Mar. 3, 2017)
SHIRLEY MARY AGNES)
GILLIS, as settlor and)
beneficiary of the Shirley Mary)
Agnes Gillis Revocable Living)
Trust, u/t/a/d March 24, 2014;)
MARIA CHRISTINE SOBLOM,)
TIMOTHY GILLIS MARIELLEN)
RONDEAU, MICHAEL GILLIS,)
DAVID GILLIS, ANNE BYER,)
STEPHEN GILLIS CATHERINE)
KING, MARGARET ALLISON,)
and DONALD GILLIS, JR., in)
their capacity as beneficiaries)
of the Shirley Mary Agnes)
Revocable Living Trust, u/t/a/d)
March 24, 2014; MARY)
HUMPHREYS, in her capacity)
as beneficiary and Trust Protector)

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of the Shirley Mary Agnes Gillis)
Revocable Living Trust, u/t/a/d)
March 24, 2014; and CHARLIE)
WHITE, individually)
Respondents,)
In the matter of the Guardianship)
and Conservatorship of) Case No.
SHIRLEY MARY AGNES GILLIS,) 15PR00124
Respondent,)

This matter came before the Honorable Katherine Tennyson on March 1, 2017 on petitions for attorney fees and costs from Shirley Gillis, David Gillis and Charlie White. The following appeared before the court: Bonnie Richardson of Folawn Alterman & Richardson LLP for Shirley Mary Agnes Gillis; Steven R. Owen for the conservator Laura J. Aust; Victoria Blachly of Samuel Yoelin Kantor LLP and Samuel C. Justice for David Gillis and Charlie White; and James Cartwright for Cartwright Baer Johansson PC.

This Court finds that Patrick Gillis's actions were unreasonable and unjustified and that the attorneys' fees incurred by other parties after the hearing to remove Patrick Gillis on November 6, 2015 were caused by and as a result of Patrick Gillis's actions. The court further finds that Patrick Gillis knew and was grossly negligent in his misconduct as a fiduciary for Shirley Gillis. Patrick Gillis's actions showed willful and wanton disregard for the interests of the settlor and trust beneficiary, Shirley Gillis. Patrick Gillis placed his own

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interests ahead of the beneficiaries in his desire to protect the trust document above all else. Based on the arguments and evidence presented by counsel, the pleadings and prior testimony, the Court's prior findings of fact and conclusions of law and the record herein,

IT IS HEREBY ORDERED AND ADJUDGED

1. David Gillis, Charlie White, and Shirley Gillis are the prevailing parties on their claims and petitions.
2. The attorneys' fees and costs incurred by the prevailing parties – David Gillis, Charlie White, and Shirley Gillis – after November 6, 2015 until February 2017, which total \$352,636.10 were caused by the self-serving and unreasonable positions taken by Patrick Gillis.
3. Shirley Gillis has paid the above referenced fees and costs, and is therefore awarded \$352,636.10 to be paid by Patrick Gillis, plus post-judgment interest at a rate of nine percent (9%) per annum commencing on the date of this judgment is entered until paid.

MONEY AWARD

1. The name and address of the judgment creditor is:

Shirley Mary Agnes Gillis
Calaroga Terrace
1400 NE 2nd Avenue, #1003
Portland, OR 97232

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2. The name, address, and telephone number of the judgment creditor's attorney are:

Bonnie Richardson
Folawn Alterman & Richardson LLP
805 SW Broadway, Suite 470
Portland, OR 97205
T: (503) 227-2022

3. The name of the judgment debtor and his address is:

Patrick Gillis
1 Landmark Ssuite, #305
Port Chester, NY 10573

SSN: N/A
Driver License Number: N/A
State of Issue: N/A

4. The name, address and telephone number for the Judgment Debtor's lawyer are:

None.

5. Other persons or public bodies who are entitled to any portion of a payment made on this judgment:

None.

6. The amount of the money award is \$352,636.10.

7. Prejudgment interest:

None.

8. Post-judgment interest is at the rate of nine percent (9%) per annum, simple interest, on the balance of the money award, \$352,636.10,

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running from the date of entry of the judgment until paid.

Submitted by:

Bonnie Richardson, OSB No. 983331
Folawn Alterman & Richardson LLP

APPENDIX F

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Probate Department

	) Case No.:
In the Matter of the	) 15 PR 00124
Conservatorship of:)
SHIRLEY GILLIS,)
Protected Person,)
PATRICK GILLIS, individually	) Case No.:
and in his capacity as qualified	) 15 PB 02258
beneficiary and successor)
trustee of the Shirley Mary	) (Note: Duplicate
Agnes Gillis Revocable Living	) JUDGMENTS were
Trust, u/t/a/d March 24, 2014,	) filed under each
Petitioner,	) case number.)
v.	) SUPPLEMENTAL
SHIRLEY MARY AGNES	) JUDGMENT AND
GILLIS , as settlor and	) MONEY AWARD
beneficiary of the Shirley Mary	) AGAINST PATRICK
Agnes Gillis Revocable Living	) GILLIS
Trust, u/t/a/d March 24, 2014;	) (Filed Mar. 17, 2017)
MARIA CHRISTINE SOBLOM,)
TIMOTHY GILLIS MARIELLEN)
RONDEAU, MICHAEL GILLIS,)
DAVID GILLIS, ANNE BYER,)
STEPHEN GILLIS CATHERINE)
KING, MARGARET ALLISON,)
and DONALD GILLIS, JR. , in)
their capacity as beneficiaries)

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of the Shirley Mary Agnes)
Revocable Living Trust, u/t/a/d)
March 24, 2014; MARY)
HUMPHREYS, in her capacity)
as beneficiary and Trust Protector)
of the Shirley Mary Agnes Gillis)
Revocable Living Trust, u/t/a/d)
March 24, 2014; and CHARLIE)
WHITE, individually,)
Respondents.)

This matter came before the Court on the Motion of LJA Fiduciary Services Inc., Conservator, by and through counsel, for an Order surcharging Patrick Gillis the sum of \$35,319.01 to reimburse Protected Person for trustee expenses, trustee compensation and undocumented litigation expenses previously paid to him. Patrick Gillis, pro se, filed an Objection to this Motion. A hearing was held on April 12, 2017 before the Honorable Katherine Tennyson. The Conservator appeared with counsel, Stephen R. Owen. Patrick Gillis did not appear nor did legal counsel appear on his behalf. The Court found that Patrick Gillis had inappropriately reimbursed himself for expenses incurred, had paid expenses from trust assets that did not benefit the trust, had paid himself trustee compensation when he had breached his fiduciary duties as trustee, and had failed to properly document the use of funds advanced to him for litigation expenses as required by the Court.

The Court has entered an Order Surcharging Prior Trustee for Reimbursement of Trustee Expenses,

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Compensation and Undocumented Litigation Expenses which is incorporated herein by reference. This Order requires that Patrick Gillis reimburse Shirley Gillis the total sum of \$35,319.01 and that a money award be entered against him in this amount, now therefore,

NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that:

1. Shirley Gillis is awarded the sum of \$35,319.01 to be paid by Patrick Gillis to reimburse Shirley Gillis for monies previously transferred to Patrick Gillis from assets of Shirley Gillis or her trust, plus post-judgment interest of nine percent (9%) per annum commencing on the date this Judgment is entered until paid.

MONEY AWARD

1. The name and address of the judgment creditor is:
Shirley Mary Agnes Gillis
Calaroga Terrace
1400 NE 2nd Avenue, #1003
Portland, OR 97232

2. The name, address, telephone number of the judgment creditor's attorney are:

Bonnie Richardson
Folawn, Alterman & Richardson LLP
805 SW Broadway, Suite 470
Portland, OR 97205
T: (503) 227-2022

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3. The name of the judgment debtor and his address is:

Patrick Gillis
1 Landmark Square, #305
Port Chester, NY 10573

SSN:

Driver License Number:

State of Issue:

4. The name, address and telephone number for the Judgment Debtor's lawyer are:

None.

5. Other persons or public bodies who are entitled to any portion of a payment made on this judgment:

None.

6. The amount of the money award is \$35,319.01.

7. Prejudgment interest:

None.

8. Post-judgment interest shall be at a rate of nine percent per annum, simple interest, on the balance of the money award running from the date of entry of this judgment until paid.

APPENDIX G

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

**PATRICK GILLIS,
Appellant,
Petitioner on Review,**

v.

**DAVID GILLIS, as Personal Representative of the
Estate of Shirley Mary Agnes Gillis and in his capacity
as beneficiary of the Shirley Mary Agnes Gillis
Revocable Living Trust, u/t/a/d March 24, 2017,
Respondent,
Respondent on Review,**

and

**MARIA CHRISTINE SOBLOM et al.,
Respondents below.**

**Court of Appeals
A164384
S068140**

**ORDER WITHDRAWING APPELLATE
JUDGMENT, WITHDRAWING ORDER
DENYING RECONSIDERATION, AND
DENYING PETITION FOR RECONSIDERATION**

On the court's own motion, the appellate judgment issued on June 9, 2021, is withdrawn.

The order denying reconsideration that issued on April 22, 2021, is also withdrawn and is superseded by this order.

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The court has considered the petition for reconsideration and orders that it be denied.

Martha L. Walters
Chief Justice, Supreme Court
Filed 11/4/2021 10:45 AM

c: Zachariah H Allen, Patrick Gillis, Multnomah
County Trial Court Administrator

**ORDER WITHDRAWING APPELLATE
JUDGMENT, WITHDRAWING ORDER
DENYING RECONSIDERATION,
AND DENYING PETITION FOR
RECONSIDERATION**

REPLIES SHOULD BE DIRECTED TO: State
Court Administrator, Records Section, Supreme Court
Building, 1163 State Street, Salem OR 97301-2563

APPENDIX H

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Patrick J. Gillis,) Multnomah County
Plaintiff-Appellant,) No. 15PB02258
v.) COA No. A164384
Shirley Gillis and David Gillis)
Defendant-Appellant.)

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter came on for hearing before the Honorable Katherine E. Tennyson, Judge of the Circuit Court for the County of Multnomah, State of Oregon, commencing on the 1st day of March, 2017.

Appearances:

Appearing in behalf of the Plaintiff
No Representative

Appearing in behalf of Shirley Gillis
Bonnie Richards, Attorney at Law

Appearing in behalf of David Gillis/Charlie White
Victoria D. Blachly, Attorney at Law

Appearing in behalf of David Gillis/Charlie White
Samuel C. Justice, Attorney at Law

Appearing in behalf of Conservator Laura Aust
Steven R. Owen, Attorney at Law

Appearing in behalf of Cartwright Baer Johansson
James R. Cartwright, Attorney at Law

* * *

[5] the trust pay for him to come here, and I basically denied that motion.

As he has – he let his attorneys go basically, he has not asked to appear for today's proceeding by telephone. We've been monitoring the phones, we haven't gotten any calls from him today.

And my understanding just from basically what he said in his motion was partially one of the reasons why he discharged his attorneys was because of a motion that was filed to allow him to attend by telephone, so my assumption is he's not asking to attend by telephone.

But I want to ask each of the parties, the lawyers here, if any of you are aware of a request by him to attend this hearing by telephone, because if you are aware of that, then I want to make sure we try to get him on the line.

MR. CARTWRIGHT: Jim Cartwright, Your Honor.

We are not aware of any such request, and we have had no meaningful contact with Mr. Gillis since we were discharged.

THE COURT: Okay.

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MR. OWEN: Your Honor, Mr. Owen. I'm going by memory, I'm not going to pull my phone out, I believe I attempted at least once if not – I know I sent him at least two emails, one of which asking if he was attending [6] – intending to appear by phone, and I received no response.

But that's my memory, I can check that if the Court wants me to.

THE COURT: I just want to have the record – so I'm not going to say that you affirmatively represented you did it twice, but you did it at least once, right?

MR. OWEN: Correct, Your Honor.

MS. RICHARDSON: We are not aware of any telephone requests. Although it would be our position, we would not object to him appearing by telephone.

THE COURT: Okay.

MS. BLACHLY: Victoria Blachly. Same, Your Honor.

THE COURT: All right.

MR. JUSTICE: Samuel Justice, Your Honor, same.

THE COURT: Okay. Is there any other information that people want to put on the record as it relates to Mr. Gillis's appearance here today?

MR. CARTWRIGHT: No, Your Honor.

THE COURT: Okay.

MR. OWEN: No, Your Honor.

THE COURT: So one issue that I do have – go ahead.

MS. RICHARDSON: Well, the only thing is, is

* * *

[12] and I know that the other parties – appearing parties do not object to it.

THE COURT: Okay.

MR. OWEN: So I just wanted to throw that out to see if we could maybe finish that one quickly.

THE COURT: So here's what I will just say, just to kind of wrap up the whole issue of Mr. Gillis's appearance today, and that is that he's not here, he hasn't called to make arrangements to be here by telephone.

My conclusion is that he is then thereby waiving his appearance at this proceeding.

If you wish to put on evidence as it relates to the settlement reached between Ms. Aust and his former counsel, you're welcome to do it, if you believe that you need it.

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If everybody is agreeing, I'm not necessarily thinking that I need to hear evidence, but I'm also mindful that people want to make sure their record is clear.

So I'll leave it in your court to decide whether or not you want to call a witness or not.

MR. OWEN: Thank you. I will just tell the Court, with that I will not be calling Ms. Aust on that issue. And just for the record, I'll explain why, and

* * *

DECLARATION OF TRANSCRIBER

I, Robyn M. Anderson, hereby certify that:

- a. I am an Official Transcriber for the State of Oregon;
- b. that I personally transcribed the electronic recording of the proceedings had at the time and place herein before set forth;
- c. that the foregoing transcript totaling 90 pages of audio transcription, including cover pages and index, represent an accurate and complete transcription of the entire record of the proceedings, as requested, to the best of my belief and ability.

WITNESS my hand at Gresham, Oregon this 23rd day of April, 2017.

Robyn M. Anderson, Transcriber
robyntype@gmail.com
(503) 618-9938

APPENDIX I
IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PATRICK J. GILLIS, Court No. 15PR00124
Plaintiff-Appellant,
vs. Appeal No.: A170275
LAURA AUST, conservator, LJA
FIDUCIARY SERVICES, INC., **HEARING - TRIAL**
Defendant-Respondent. **ASSIGNMENT**

TRANSCRIPT OF PROCEEDINGS

Volume II of II (pages 4 through 9)

APPEARANCES: For the Plaintiff: Unknown
For the Defendant: Stephen R. Owen

BE IT REMEMBERED THAT the above-entitled matter came on regularly for hearing before the Honorable Susan M. Svetkey, Judge of the Circuit Court of the County of Multnomah, State of Oregon, commencing on the 6th day of February 2019.

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

* * *

[7] MR. OWEN: I submitted a Certificate of Service in regard to my opposition to his motion to continue. He's not somebody that's ever agreed to

electronic service, but I did put in my certificate that I emailed him a copy of that on Monday.

Come to find out the age-old attachment was not attached. So I have to correct that and say I emailed it to him Tuesday morning, but I did mail it, which is required. So I just wanted to make sure on the record that that is correct.

THE COURT: I appreciate your saying that, but from what I can see and from what you're saying, the motion to continue the case was never granted. And so, this case remained on trial assignment for today. And Mr. Gillis has not appeared.

As I understand, he did not the last time this case was in Court. So I'll –

MR. OWEN: And my –

THE COURT: -- sign your –

MR. OWEN: -- my speculation is that it would have been granted at the last hearing, but for Judge Tennyson's recusal because he failed to appear at that time.

And the Court had offered him the ability to appear by phone and he did not phone in as well.

THE COURT: Okay.

MR. OWEN: And Your Honor –

* * *

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CERTIFICATE

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings
in the above-entitled matter.

Chris Hwang
Transcriber
April 3, 2019
