

No. 23-239

Supreme Court, U.S.  
FILED

JUN 23 2023

OFFICE OF THE CLERK

In The  
**Supreme Court of the United States**

STUART BARNES ON BEHALF OF  
SHANNA LEA ALLEN,

*Petitioner,*

v.

SHAWN ANNITA ALLEN,

*Respondent.*

On Petition For A Writ Of Certiorari  
To The Supreme Court Of Appeals  
Of West Virginia

**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

The question is whether the doctrine of chances theory or character evidence is supported. The financial exploitation petition presented evidence that Ms. Anna Allen (mother's) estate was mismanaged and exhausted, in addition to being buried without a grave marker. Further, the Guardian Ad Litem report and appointed guardian's testimony provided evidence of financial exploitation of the protected person. The trustee of the decedent's estate and appointed guardian/conservator are the same person. The petition information was not refuted or challenged. The respondent applied for guardianship solely for nondisclosure of protected person's financial assets, more specifically the "wrongful death" settlement of \$147,000 in 2017 and its official account balance as of 2021 and 2023.

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## APPENDIX

Petition for Temporary – Financial Exploitation Protective Order Q1-AF-3) (Filed July 28, 2021] <i>Exhibit</i> .....	App. 1
Order Appointing Guardian Ad Litem and Directing Mental Hygiene Commissioner to Conduct Evidentiary Hearing on Matters Alleged in Petition For Financial Exploitation Protective Order – The Honorable Carrie Webster (21-AF-3) (filed August 20, 2021) .....	App. 3

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Order of Appointment of Guardian and/or Conservator The Honorable Judge Maryclaire Akers (Case 2021G-20-0083-OA) filed November 21, 2021, however, was <i>not received until July 8, 2022</i> .....	App. 15
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The Supreme Court of Appeals was contacted because the Intermediate Court personnel stated that their office had no jurisdiction of the case since their establishment was July 1, 2022. Given the Guardian 6-month accounting was supposed to be heard by the Honorable Maryclaire Akers who filed the final order, the hearing never took place. The court operates on a “final order” and “out of time” protocols. The request was not to set aside the guardian/conservator appointment order, but to ensure responsibilities were addressed, however the appointment order was received purposely “out of time” thus an appeal to the higher court. There is one clerk of courts for both the Intermediate and Supreme Court of Appeals. I was instructed to file it (with a stated motion) with	

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the Intermediate Court of Appeals even though I was informed that the court does not have jurisdiction and it would be out of time if the office had jurisdiction. Upon receiving the notice and within 30 days, I was informed by the clerk of courts to file a motion to the Supreme Court of Appeals because it would be within 30 days so it would not be out of time. Notwithstanding, the appeal was dismissed for being “out of time”	
This case was deceptively and unethically not heard by the lower court in the best interests of the protected person	

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**OPINIONS BELOW**

**CIRCUIT COURT**

**Order of Appointment of Guardian and Conservator (Case 2021-G-20-0083-OA).** The court ordered full guardian and conservatorship.

*Filed without petitioner and counsel notifications and received “out of time”. No guardian hearing was conducted per WV Code Section 44A-2-9 and the fiduciary commissioner never validated the petitioner’s bank account balances. Subsequently, repeated requests with appointing judge to have a hearing regarding guardian 6-month accounting and pertinent conservator responsibilities were denied – hence the appellant filing.*

**APPELLATE COURT**

**Intermediate Court of Appeals:**

**Order of Intermediate Court of Appeals (Shanna Allen, a protected person No. 23-ICA-47).** The court dismissed the case.

*A Notice of Appeal was filed even though the court had no jurisdiction. The petition was originally filed with the Supreme Court of Appeals, but the Clerk of Court directed, “for the petition to be heard at the Supreme Court of Appeals, a motion needed to be attached and filed with the Intermediate Court of Appeals”. The petition was dismissed at the Intermediate Court of Appeals.*

**Supreme Court of Appeals:**

**Order of Supreme Court of Appeals (Shanna Allen, protected person No. 23-185). The court dismissed the case.**

*Upon receiving dismissal from Intermediate Court of Appeals, and per Clerk of Court's instructions, a Notice of Appeal was filed with the understanding the case would be heard if received within 30 days. The supporting documents that were submitted initially were returned and resubmission was denied. The petition was dismissed for being "out of time". Obligated to adhere to an "out of time" provision not honored by the lower court itself, and does not apply, given the appointment was not being contested due to family composition; guardianships are ongoing; and "out of state" court stipulations. The appeal was for the assurance that the 3rd party "special needs" trust is established and funded, and compliance with Sections 44A-3-1; 44A-3-3; 44A-3-4; and 44A-3-13 of the West Virginia Code is mandated.*

*This action protected the missteps of the lower court, and by dismissing the appeal, it prohibited the petitioner from having her case properly and unbiasedly heard.*

*The protected person possessing mental disabilities has constitutional rights. These rights include aid, counseling, and services which will enable them to maximize their capabilities in social integration.*

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## **JURISDICTIONAL STATEMENT**

The West Virginia Supreme Court of Appeals dismissed the matter on April 3, 2023. This Court has jurisdiction under 28 U.S.C. § 1257(a).

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## **STATEMENT OF THE CASE**

The protected person's wrongful death settlement from deceased mother was not placed into the 3rd party "special needs" trust per Last Will and Testament of Anna Allen (deceased mother). The funds are maintained in a nominal interest earning (0.01%) savings account used primarily as a transactional account for the appointed guardian during the past 6 years.

A financial exploitation petition was filed based upon the protected person's complaint of misappropriation of financial resources. A financial exploitation evidentiary hearing was ordered; however, Deputy Mental Hygiene Commissioner and Guardian Ad Litem did not present official bank statements nor allowed the petitioner's counsel to obtain such records that would have validated exploitation that exists beyond the Guardian Ad Litem and Department of Health and Human Resources reports. It was also revealed the protected person is required to pay for all structural expenditures (i.e., damage of roof, walls, floors, porch, rodent control etc.), when she has only a third interest in the home while living on a modest SSDI monthly income. The protected person is also

required to pay for entire family vacations held annually at Virginia Beach, VA.

Contrary to the Honorable Judge Carrie Webster's financial evidentiary hearing mandates, the Deputy Mental Hygiene Commissioner violated WV Code Section 44A-1-14. The Deputy Mental Hygiene Commissioner recommended temporary protection orders be released two months after the guardian/conservator was already appointed without the presentation of financial records to the Honorable Judge Maryclare Akers. The appointment was done two months prior to the Mental Hygiene Commissioner's recommendations report being finalized. The appointment order was not received until eight months later, making it "out of time" for appeal or modifications by counsel, thereby violating WV Code Section 44A-2-13 that mandates the order of appointment should have been received within 14 days.

Per counsel, the petitioner's response to the Guardian 6-month accounting was to be presented at a hearing with the appointing judge, but was denied. Although this matter should have been addressed at the lower court, an appeal was filed with the Supreme Court of Appeals, because the Intermediate Court of Appeals was not in existence at the time of the appointment, yet it was dismissed due to being out of time that does not apply because the appeal was not to remove or replace the appointed guardian.

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## **REASON FOR GRANTING THE WRIT OF CERTIORARI**

The protected person's financial exploitation case was deceptively not heard. The wrongful death settlement should be in a party "special needs" trust and properly managed instead of a savings account that continues to be inequitably depleted while earning nominal interest that does not offset inflation and/or cost of living increases. This action violates WV Code Section 44A-3-4 that states the estate should be managed in the best interests of the protected person and investing the funds of the estate in accordance with the standard of prudent investing.

Although the appointed guardian filed a guardian and conservator petition to prevent the disclosure of the protected person's financial assets, the Deputy Mental Hygiene Commissioner recommended releasing temporary and permanent account holds two months after the Guardian and Conservator final order was already filed without any banking records being presented and reviewed at the ordered financial evidentiary hearing.

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## **CONCLUSION AND PRAYER FOR RELIEF**

The proper relief would be to remand this case to the Intermediate Court of Appeals. It would give the protected party an opportunity to present her case to a panel of judges, in addition to, an opportunity for her assets to be replenished and grow provided the

appointed guardian and conservator can be self-disciplined and looks towards the future with the best interests of her sister at heart and safeguards to provide supplemental protection. The appointed guardian should invest in her sister (as a child) and prepare her for the future including a sound contingency plan in case something tragic happens and governmental medical benefits are changed in the future.

Secondly, the medical physician's report states the protected person lacks social skills. It is imperative that her social skill set is enhanced. This action can be done by effectively utilizing the social programs and non-profit organizations within Kanawha County. Being able to effectively communicate and interact with people as you get older is extremely important.

Respectfully submitted,

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