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Attorney for Defendant and Appellant

COURT OF APPEAL FOR THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION [NUMBER]

In re [CHILD’S INITIALS].,) Court of Appeal
) No.: [CASE #]
A Person[s] Coming Under The)
Juvenile Court Law.) Superior Court
_____) No.: [CASE #]
[SPECIFIC COUNTY & AGENCY)
TITLE],) APPELLANT’S MOTION FOR
Plaintiff and Respondent,) CALENDAR PREFERENCE
v.) PURSUANT TO RULE 8.240
)
[PARENT’S INITIALS] (mother/father),)
_____)
Defendant and Appellant.)

TO THE HONORABLE [JUSTICE], PRESIDING JUSTICE, AND ASSOCIATE
JUSTICES OF THE FOURTH DISTRICT COURT OF APPEAL, DIVISION
[NUMBER]:

Appellant-[mother/father] [PARENT’S NAME & LAST INITIAL] BRENDA P.,
moves this Court for an order directing this appeal be heard on an expedited basis
pursuant to California Rules of Court, rule 8.240. This appeal is from a judgment
establishing a Lanterman-Petris-Short (“LPS”) conservatorship.

FACTS AND PROCEDURE

On December 22, 2006, appellant was found by a jury to be “gravely disabled” for purposes of establishing an LPS conservatorship, pursuant to Welfare and Institutions Code¹ section 5350 et. seq. On the same day, the superior court ordered the least restrictive level of placement for appellant be a closed, locked facility with certain specified disabilities. (C.T. pp. 53-55).

Appellant filed her notice of appeal from the judgment on January 10, 2007. (C.T. p. 56.) The record on appeal was filed sometime before appellate counsel was appointed on March 8, 2007. Appellant filed her opening brief on May 23, 2007.

Appellant claims the court’s placement order, that Brenda be placed in a closed, locked facility was not supported by substantial evidence, and was based on improper considerations not authorized by governing law. Given the unique circumstances applicable to LPS conservatorships discussed below, the ordinary appeal process will render the present appeal moot unless this appeal is expedited.

MEMORANDUM OF POINTS & AUTHORITIES

By statute, Brenda’s LPS conservatorship will automatically expire at the end of one year on December 22, 2007. (§ 5361.) Thus the ordinary appeal process probably will not conclude before the conservatorship expires and therefore could render this appeal moot. (*Conservatorship of Forsythe* (1987) 192 Cal.App.3d 1406, 1408 [*Forsythe*].)

¹All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In the *Forsythe* case, *supra*, the appellate court recognized that appeals in LPS conservatorship cases run the risk of becoming moot because the conservatorship terminates by operation of law in one year. (*Forsythe, supra*, 192 Cal.App.3d at p. 1408.) Consequently, appeals in LPS conservatorship cases could perpetually evade appellate scrutiny because they would become moot before the ordinary appeal process concluded. To avoid this result, the court in *Forsythe* held the appeal was not moot. The court also suggested it was appropriate for reviewing courts to entertain requests to expedite the appeal in such cases. (*Ibid.*)

Rule 8.240 of the California Rules of Court permits litigants to request calendar preference in the Court of Appeal. Pursuant to the *Forsythe* decision, such a request is proper in an LPS conservatorship case. Since the judgment from which this appeal was taken resulted in appellant's loss of liberty, her request for calendar preference should be granted.

CONCLUSION

Given the unique circumstances surrounding appeals in LPS conservatorship cases, especially given the fact LPS conservatorships expire by operation of law in one year, a request for calendar preference is proper. Since the judgment involves appellant's loss of liberty, she should be entitled to have her appeal heard on an expedited basis before her challenge becomes moot by operation of law.

Respectfully submitted,

DATE: _____

[ATTORNEY NAME]
COUNSEL FOR APPELLANT

DECLARATION OF [ATTORNEY NAME], Esq.

I, [ATTORNEY NAME], declare:

1. On March 25, 2003, I was appointed counsel on appeal for appellant, [CLIENT NAME] Brenda P., the conservatee. I have read the entire appellate record and prepared appellant's opening brief. I am familiar with the appellate process through my work as a panel attorney with Appellate Defenders, Inc.

2. The judgment from which this appeal was taken subjects Brenda to both a loss of liberty and to certain disabilities which deprive her of rights ordinary citizens enjoy, such as the right to choose where one lives, the right to refuse medical treatment or the right to possess a driver's license. Brenda continues to be deprived of these rights.

3. I believe that due to error in the proceedings below, grounds exist for reversing the portion of the judgment that requires Brenda be placed in a closed, locked facility. Brenda is therefore being detained illegally in a level of placement that is not the least restrictive placement for her treatment needs. (§ 5358, subd. (a)(1)(A).) Further, I believe that in all likelihood this appeal will become moot because the conservatorship will terminate on December 22, 2007, before the ordinary appeal process concludes.

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

Executed at [CITY NAME], California, on [DATE].

[ATTORNEY NAME]
COUNSEL FOR APPELLANT