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Plaintiff, in propria persona

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 7 **COUNTY OF SANTA CLARA**
CIVIL DIVISION UNLIMITED JURISDICTION

8 **JEFFREY R. GOLIN,**
 9 **ELSIE Y. GOLIN,**
 10 **NANCY K. GOLIN,**
Plaintiffs
 11 v.
 12 **CLIFFORD B. ALLENBY,**
et al
 13 *Defendants*

No.: 1-07-CV-082823

**SECOND SUPPLEMENTAL MEMORAN-
 DUM OF POINTS AND AUTHORITIES
 OF PLAINTIFF JEFFREY GOLIN IN OP-
 POSITION TO MOTION TO STRIKE OF
 STANFORD HOSPITAL AND CLINICS,
 INC.**

Judge: Hon. Thomas P. Breen¹
 Department: 5
 Date: September 17, 2007
 Time: 9:00 a.m.

16 **LEGAL ARGUMENT**

17 Stanford University and Clinics, Inc., improperly introduce a new argument in their re-
 18 ply brief, which lies outside the scope of the opposition brief of the plaintiffs, which we
 19 contend must be redirected here.

20 Stanford argued that, because NANCY GOLIN's parents, JEFFREY R. GOLIN and
 21 ELSIE Y. GOLIN, were not and did not seek to become Nancy's legally appointed conser-
 22 vators at age 18, the parents lacked legal custody of Nancy, and therefore Stanford's release
 23 to non-custodial caregivers from Embee Manor under the supervision of SARC and APS
 24 on November 27, 2001 did not constitute kidnapping, torture or abduction.

25 **I. NANCY GOLIN'S PARENTS HAD LONG ESTABLISHED LEGAL CUSTODY**
 26 **AS DE FACTO GUARDIANS**

27 This argument fails because, as Nancy's lifelong caregivers, the parents achieved the le-
 28 gal status of *de facto guardians* (*guardians de son tort*).

¹ Retired judge of the superior court sitting under assignment by the Chairman of the Judicial Council.

1 They did this by virtue of the fact that the parents willingly *undertook* the duties of cus-
2 todians after Nancy had reached the age of 18 years old, fed, housed and cared for her, reli-
3 giously gave her prescribed medications, took her to doctors and hospitals, they performed
4 all these duties without the slightest opposition because it was generally recognized that
5 they were doing a good job and were admired in the community for doing so.

6 Mrs. Golin received payment on her behalf by state and federal agencies, satisfied obli-
7 gations on her part, signed innumerable medical consent statements including at Stanford
8 Hospital which were accepted as legally satisfactory by Stanford Hospital employees and
9 doctors for 29 years including many years when she was an adult. She consulted with her
10 doctors on her behalf, and the doctors accepted Elsie as her *de facto* guardian. There is not
11 one recorded instance where concerned doctors or officials felt it necessary to warn Elsie to
12 get conservatorship of Nancy. Elsie did all the things that a conservator does including
13 make medical decisions, choose placements, make educational decisions, sat with her at her
14 bedside night to attend to her night after night when she was sick, bought property for her
15 in her name. The parents did this for 31 years without anyone objecting in even one previ-
16 ous instance.

17 Nancy herself never opposed her parents' guardianship and displayed obvious affection
18 and trust in her parents decisions, still preferring the parents to her present caregivers.

19 The County paid Elsie Golin a wage from 1996 to 2001 for her labor under the In-Home
20 Health Support Services Plan, and thus demonstrated that the government trusted Elsie as
21 Nancy's *de facto* guardian.

22 The Federal Social Security Administration accepted Elsie as Nancy's representative
23 payee for 15 years for purposes of SSI payments.

24 It would be hard to imagine a more complete description of a *de facto* guardian. There
25 was therefore essentially no dispute that Nancy's parents fully established their rights as *de*
26 *facto guardians* after the age of 18, with our without the approval of San Andreas Regional
27 Center's frivolous stamp of approval in a conservatorship proceeding.

28 It is therefore disingenuous in the extreme for Stanford to now claim after all these years
that they had the right to reassign Nancy's custody by kidnapping her and releasing her to

1 non-custodial caregivers, without at least taking the steps to appoint an emergency conser-
2 vator or take any steps whatever to legalize their actions. That Nancy's parents had no
3 rights whatever in her care and custody, merely because they failed to fill out the necessary
4 paperwork when she became 18, and therefore no party can complain about her injuries or
5 abuses.

6 Stanford asserts that Nancy's parents failed to take the necessary legal steps to assure
7 their legal custody of Nancy, the parents and not Stanford must assume the responsibility
8 for what happened, but Stanford does not provide any legal authority that would **require** an
9 incapacitated or handicapped adult's caregivers to seek that conservatorship absent the ex-
10 istence of dispute from third parties, and we assure that we have not found one either. In-
11 deed as we have argued in our Opposition to Stanford's demurrer, Nancy was exempt from
12 "gravely disabled" status, notwithstanding that she could not feed, clothe and house herself,
13 because she had parents that were willing and able to do so, and thus the provision of W&I
14 §5250(d)(1) alone statutorily barred Nancy's being detained under §5150 or 5250 as
15 "gravely disabled". Nancy's parents felt, with constitutional support, that Nancy did not re-
16 quire legal authorization to live with her parents at home or legal "placement" by the state
17 to live there since she chose to do so.

18 **II. DE FACTO GUARDIANS LONG RECOGNIZED AS HAVING STANDING IN** 19 **COMMON LAW AND EQUITY**

20 In plain language, the general rule is, if you voluntarily *undertake* the role of guardian,
21 and you *assume the duties* doing everything a guardian is required to do, you have estab-
22 lished a right in common law as a *de facto guardian* or *guardian de son tort* (you "*appoint*
23 *yourself*").

24 The reasoning underlying the general rule is expressed in *Davis v. Harkness* (1844) 6 Ill
25 173, 41 Am Dec 184, wherein the court, quoting different statements of the rule found in
26 the earlier cases of *Newburgh v. Bickerstaffe* (1684) 1 Vern 295, 23 Eng Reprint 478, and
27 *Van Epps v. Van Deusen* (1833, NY) 4 Paige 64, 25 Am Dec 516, declared: "It would be a
28 strange rule of equity, indeed, if the infant were not as well protected against the violence
of the wrong-doer, as he is against the peculations of an appointed guardian. If he receive

1 the money of the infant, and use it, he is estopped from denying that he received it as
2 guardian, and so is his representative."

3 To the same effect, see *Harbin v. Bell* (1875) 54 Ala 389, wherein it was held that one
4 *who had procured his own appointment as a minor's guardian and in that capacity had*
5 *received money belonging to the minor, and had made returns as guardian to the court,*
6 could not exonerate himself from liability by alleging that he was not legally appointed
7 guardian, but that, having assumed the office, having undertaken to perform its duties, and
8 by means thereof having obtained the minor's money, he must be held accountable, as other
9 trustees.

10 CONCLUSION

11 For reasons stated herein, Stanford's motion to strike and demurrer should be denied.

12 Submitted this 14th day of September 2007, at San Jose, CA.

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14 Jeffrey R. Golin, in pro per

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PROOF OF SERVICE

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action; my business address is 93 E. San Carlos St., San Jose, CA 95112. I am readily familiar with the business practices of the collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I served the following documents to the parties who have appeared in this case:

SECOND SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES OF PLAINTIFF JEFFREY GOLIN IN OPPOSITION TO MOTION TO STRIKE OF STANFORD HOSPITAL AND CLINICS, INC.

Via Federal Express Next Day Business Day and paid for by sender to the persons noted on the attached Service List

Via e-mail to the persons noted on the attached Service List

Via Personal Delivery to the persons noted on the attached Service List.

Via First Class Mail to the persons noted on the attached Service List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed September 14, 2007, at San Jose, California.

Nathan Nava