S266033

Case No.

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SUPREME COURT OF CALIFORNIA

Conservatorship of the Person and Estate of O.B.	)	Related to Case No. S294938
T.B., et al.,	)	Second District Court of Appeal No. B290805
Petitioners and Respondents, vs.	)	
O.B.,	)	
Objector and Appellant.	)	

Appeal from the Superior Court of California,
County of Santa Barbara
Honorable James Rigali, Judge
(Santa Barbara County No. 17PR00325)

PETITION FOR REVIEW

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ISSUES PRESENTED

(1) Has the "clear and convincing evidence" standard for the imposition of a conservatorship been met where the evidence consists primarily of the testimony of the person seeking conservatorship, which is contradicted by other evidence in the record?

(2) Does Probate Code section 1800.3, subdivision (b), which requires a trial court to make an express finding that "the granting of a conservatorship is the least restrictive alternative needed for the protection of the conservatee," require the trial court to expressly state the reasons for its determination, the less restrictive alternatives considered, and/or the reasons why those alternatives were not feasible?

WHY REVIEW SHOULD BE GRANTED

This Court should again grant review in this case, this time of the Court of Appeal's most recent reported decision, to address several recurring issues of public importance left unsettled following this Court's prior decision (*Conservatorship of O.B.* (2020) 9 Cal.5th 989 (hereafter "*O.B. I*") and illustrated by the appellate court's decision following remand.

Although this Court in *O.B. I* clarified that an appellate court, in reviewing the sufficiency of the evidence in a conservatorship proceeding, must consider whether that evidence met the "clear and convincing evidence" standard required in

such proceedings (Probate Code section 1801, subdivision (e)), it left open the issue of how that standard would be met, and what types of evidence could be considered "clear and convincing." The absence of such guidance permitted the Court of Appeal, on remand, to simply acknowledge in passing this Court's holding, while reissuing, virtually word for word, its prior opinion, with no clear explanation as to how the evidence adduced at trial met the "clear and convincing standard" that it belatedly and grudgingly acknowledged it was obligated to apply. In particular, the absence of such guidance permitted the Court of Appeal to reach its apparently preordained conclusion upholding the trial court's conservatorship order despite the fact that the only evidence presented in support of that order consisted of: (1) the trial court's own subjective observations of petitioner, the proposed conservatee; (2) excerpts of reports from experts who did not testify at trial, and which were introduced only to explain why the experts that actually disagreed with those reports; and (3) the testimony of petitioner's mother, the person seeking to impose such conservatorship, which was not only obviously biased and self-serving, but was contradicted by the testimony of others with a demonstrably more thorough and accurate basis for their opinions. Further review by this Court is therefore appropriate, to clarify the nature of the "clear and convincing evidence" required to justify the loss of personal autonomy resulting from the imposition of a conservatorship, to provide meaningful appellate review of conservatorship orders, and to prevent future similar abdications of responsibility by appellate courts.

Review is also appropriate to address another issue and requirement under the conservatorship statute, to which the appellate court, in its most recent opinion, again gave short shrift. In addition to requiring proof by clear and convincing evidence, the conservatorship statute requires the petitioner to prove, and the trial court to expressly find, that "the granting of a conservatorship is the least restrictive alternative needed for the protection of the conservatee." However, the Court of Appeal in this case again largely evaded those requirements, by upholding the trial court's conclusory statement that it made such a statement, which is contained on a preprinted Judicial Council form. The appellate court did so despite the fact that there was no indication by the trial court as to what less restrictive alternatives it considered; the reasons why such alternatives were not feasible or effective; or the evidence on which the court relied. The result was the imposition of the drastic remedy of conservatorship, rather than other, less restrictive alternatives, such as a power of attorney or additional training or therapy for petitioner, which petitioner's counsel suggested at trial. This Court should, therefore, ensure that the statutory requirement is met, and that trial court meaningfully consider less restrictive alternatives to conservatorship, by granting review to address the extent of the finding required by the conservatorship statute.

STATEMENT OF THE CASE

A. The Parties, And The Respective Conservatorship Petitions.

Petitioner O.B. ("Petitioner") is the conservatee in this action, which was brought by her mother, T.B. ("Mother"), and her older sister, C.B. ("Sister") (collectively "respondents"). L.K. is the grandmother of Mother, and the great grandmother of Petitioner. Petitioner, who was diagnosed with autism when she was twelve years old, resided with L.K. from the time that she was a small child until the granting of the conservatorship petition. At the time of the conservatorship proceedings, Petitioner was eighteen or nineteen years old, and was a senior at Cabrillo High School in Lompoc, while Mother and Sister resided in a different school district in Orange County.

On August 1, 2017, respondents filed a petition for the appointment of a temporary conservatorship, which was issued on August 18, 2017. On September 11, 2017, L.K. filed a counter-petition to be appointed conservator of Petitioner, and later filed an amended petition, which added Petitioner's cousin (C.P.) as an additional proposed co-conservator.[1]

B. The Educational Dispute, And The Trial Court's Preliminary Orders.

On September 14, 2017, respondents filed a declaration by an education rights attorney (Knox) outlining allegations against

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[1]During the litigation, L.K. and C.P. took the position that no conservatorship was necessary, but that if one were appointed, it should be them rather than respondents.

the Lompoc Unified School District, where Petitioner attended classes at Cabrillo High School. In response, the trial court denied Petitioner's request that she be permitted to hold her own educational rights, and appointed a guardian ad litem (Faulks) as to those rights. The court ordered that there be no changes to Petitioner's Individual Education Plan (IEP), that she not be removed from Santa Barbara County without the court's permission, and that she continue to attend Cabrillo High School. However, on October 30, 2017, the court ordered Knox and Faulks to "work together to have [Petitioner's] IEP modified," that Petitioner "shall not graduate from Cabrillo High School," and that she "shall not take World History at Cabrillo High School," which was the one remaining course required for her to graduate.

C. The Granting Of The Conservatorship Petition, And The Resulting Appeal.

Trial on the conservatorship petitions was held on November 28, 2017, May 4, 2018, and May 29, 2018. At trial, Petitioner presented the testimony of her great grandmother L.K., with whom she had lived since the age of three or four, as well as of several third party experts, including a psychologist and a probate investigator for Santa Barbara County. Each of them testified that Petitioner was in the higher range of the autism spectrum and was intelligent and high functioning; that she could perform certain basic tasks; and that a conservatorship was, therefore, inappropriate. By contrast, the only evidence presented by Mother consisted of her own testimony, which stated, among other things, that Petitioner was incapable of

performing daily tasks, including dressing and cooking for herself, and is too trusting of other people.

On May 24, 2018, the court granted Mother's petition, and appointed her as conservator of Petitioner, over Petitioner's objection. Petitioner appealed the order, arguing among other things that there was insufficient evidence to establish that Petitioner lacked the ability to manage her affairs, that the trial court failed to consider the existence of less restrictive alternatives to conservatorship, and that the trial court improperly prejudged the need for a conservatorship.

D. The Court Of Appeal's Initial Decision, The Petition For Review, And This Court's Opinion.

On February 26, 2018, the Court of Appeal (Second District, Division Six) issued its reported decision, affirming the trial court's conservatorship order. (*Conservatorship of O.B.* (2019) 32 Cal.App.5th 626.) In holding that sufficient evidence supported the establishment of a limited conservatorship, the Court rejected Petitioner's argument that it was required to apply the same "clear and convincing evidence" standard as the trial court in determining whether "substantial evidence" supported the judgment. (Probate Code, section 1801, subdivision (e).) The Court of Appeal also held that the trial court properly considered Petitioner's desires and possible less restrictive alternatives, and that the trial court did not improperly prejudge the case. On March 18, 2019, the court denied a petition for rehearing.

On May 1, 2019, this Court granted Petitioner's initial petition for review (Case No. S254938), and on July 27, 2020

reversed the Court of Appeal's decision. (*Conservatorship of O.B.* (2020) 9 Cal.5th 989 (*O.B. I*).) This Court addressed a split of authority as to whether appellate review of the sufficiency of the evidence must incorporate the "clear and convincing" standard, which applies in conservatorship matters (Probate Code section 1801, subdivision (e)). In holding that it did, this Court rejected the position of the Court of Appeal that "the clear and convincing standard of proof has no bearing on appellate review for sufficiency of the evidence" and instead "disappears" on appeal. (*O.B. I,* 9 Cal.5th at pp. 995, 1004, 1012.) Instead, this Court held that "appellate review of the sufficiency of the evidence in support of a finding requiring clear and convincing proof must account for the level of confidence this standard demands," and that the appellate court must determine "whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true." (*Id*. at pp. 995-96.) In doing so, the appellate court "must view the record in the light most favorable to the prevailing party below and give due deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence." (*Id*. at p. 996.)[2]

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[2]This Court stated that its conclusion found support "in logic, in the policy interests that are often implicated when clear and convincing evidence supplies the standard of proof, and in precedent," including the definition of "substantial evidence" as "evidence that is 'of ponderable legal significance,' 'reasonable in nature, credible, and of solid value,' and 'substantial' proof of the

Because the Court of Appeal erroneously believed that the "clear and convincing" standard "disappears" on appeal, this Court remanded the matter to that court "for it to reevaluate the sufficiency of the evidence in light of the clarification we have provided." (*O.B. I*, 9 Cal.5th at p. 1012.)

E. The Court Of Appeal's Subsequent Reported Decision.

Following remand, and without requesting any further briefing or argument, the Court of Appeal (Second District, Division Six) on December 2, 2020, issued its reported decision, a copy of which is attached hereto as an exhibit, pursuant to the Rules of Court. In it, the court again affirmed the trial court's conservatorship order. The court acknowledged this Court's reversal of its prior decision, and the directions to "'reevaluate the sufficiency of the evidence in light of [this Court's] clarification' of how an appellate court should review a 'finding made by the trier of fact pursuant to the clear and convincing standard'" (Slip Opinion, at p. 1, quoting *O.B. I, supra*, 9 Cal.5th at pp. 995, 1012). However, the court held that sufficient evidence supported the conservatorship order, even under the "clear and convincing evidence" standard. (Slip Opinion, pp. 11-14.) Other than

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essentials which the law requires in a particular case." (*Id*. at p. 1106, quoting *Estate of Teed* (1952) 112 Cal.App.2d 638, 644.) This Court further stated that "keeping the clear and convincing standard in mind when reviewing for sufficiency of the evidence helps ensure that an appropriate degree of appellate scrutiny attaches to findings to which this standard applies." (*O.B.*, 9 Cal.5th at p. 1006.)

references to this Court's opinion, and the omission of its prior, erroneous discussion regarding the application of the "clear and convincing evidence standard on appeal, the Court of Appeal's opinion largely repeated, verbatim, its prior 2018 written opinion.[3] The Court of Appeal also repeated its determinations that the trial court properly considered Petitioner's desires and possible less restrictive alternatives, and that the trial court did not improperly prejudge the case. (Slip Opinion, pp. 14-16.)[4]

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[3]Other than as stated above, the only significant changes to the Court of Appeal's prior decision are contained at pages 12-13 of the Slip Opinion, and appear to be largely stylistic. Thus, for example, the recent decision refers to "[t]he record as a whole" rather than "Mother's testimony" (Slip Opinion, p. 12). In addition, although acknowledging the contrary expert testimony, the current opinion additionally states that "[b]ecause mother was in nearly daily contact with appellant for the past 10 years, mother was in a far better position that Dr. Khoie and Donati to evaluate appellant's capacity to function independently." (*Id*.) The opinion also treated differently the written evaluations of Dr. Jacobs and Dr. Blifeld, which were reviewed by Donati, but who did not testify at trial. Specifically, instead of stating that those written evaluations constituted direct evidence of the need for a conservatorship, the Court of Appeal stated merely that they conflicted with the testimony of Khoie and Donati. (*See* Slip Opinion, pp. 12-13.)

[4]In largely repeating verbatim its prior decision, the Court of Appeal incorporated certain factual errors. Among other things, the Slip Opinion repeated its prior statement, based on Mother's testimony, that "[t]wo years ago, appellant 'ran off' to see 'Sponge Bob on Hollywood Boulevard.'" (Slip Opinion, p. 8.) The Court did so despite the fact that Petitioner, in her reply brief to this Court (p. 10 n.3), previously stated that the incident did not involve the act of running away, but instead occurred when Petitioner was in Hollywood sightseeing, and simply walked over to a costumed

STATEMENT OF FACTS

A. The Testimony Of The Proposed Conservators.

1. The Testimony Of Petitioner's Mother.

Mother is a designer, and lives with her husband (Petitioner's father) and Petitioner's sisters in a five bedroom home in Silverado Canyon in Orange County. At the time of the conservatorship proceedings, Petitioner resided with Mother's grandmother (Petitioner's great grandmother) L.K. in Lompoc, where she has lived since she was 4½ years old. According to Mother, Petitioner is unable to clean or cook for herself, balance a checkbook, or handle a financial transaction, but is able to shower and get dressed. She also stated that Petitioner needs guidance in making routine decisions and assistance in performing daily tasks, including what clothes to wear and brushing her teeth and hair, and that Petitioner is prone to emotional outbursts and is too trusting of other people. Mother filed the conservatorship petition to "basically protect her from the school and then long-term just protect her," and intended to eventually move Petitioner to Orange County, where she, her husband, and her other daughters reside.

2. The Testimony Of L.K. (Petitioner's Great Grandmother).

L.K. is the grandmother of Mother, and the great grandmother of Petitioner, and is 82 years old and in good health. When Petitioner was a year and a half old, L.K. noticed a knot

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character to take a picture.

protruding from Petitioner's head, and Mother told her that she thought that Petitioner would have to be institutionalized. Instead, L.K. agreed to take care of Petitioner, and Petitioner has resided with her ever since. L.K. believes that Petitioner is going to be successful eventually, because she has a "fantastic" memory and is "clever" on the computer, and L.K. would continue to take care of and love and guide Petitioner for as long as she can. L.K. does not believe that Petitioner needs a conservatorship, and that she can take care of herself "as much as any teenager can." Petitioner does not cook on the stove, but can get cereal, warm up pizza, and make a quesadilla and bologna sandwich.

B. The Expert And Other Third Party Testimony.

Kathy Khoie, Ph.D., a psychological evaluator, conducts evaluations for intellectual disabilities, including autism and conservatorships. She has conducted approximately 5,000 evaluations over the past ten years, including approximately 1,500 conservatorship evaluations. During a December 2017 evaluation, Khoie considered Petitioner's intellectual, mental status, academic achievement, and adaptive functioning, reviewed records and interviewed Petitioner and L.K., and reviewed approximately 2,000 pages of educational and academic materials. She also administered various intelligence and behavior assessment tests, and received information regarding Petitioner's adaptive functioning.

Khoie did not believe that Petitioner was a candidate for conservatorship, based on Petitioner's intellectual functioning level, showing her to be of at least average intelligence, and high

average in her nonverbal functioning, with the ability to talk about her likes and dislikes. Petitioner's mental status examination is within normal limits, and shows normal precognition with no impairment. In addition, Khoie testified that it is unusual for a conservatorship request to be based on autism, or to evaluate individuals with average intellectual functioning for conservatorship, and that most conservatorship evaluations are based upon intellectual disability, which impairs the individual's perception of reality. Unlike typical individuals with autism that required a conservatorship, Petitioner did not exhibit any severe or significant difficulty with her adaptive functioning skills, such as an inability to communicate or care for herself or to receive training and experience. Petitioner is able to shower, use the restroom, and groom herself independently, and has assisted in paying her medical bills and, although Petitioner presently needs assistance in handling money, with proper training she would be able to pay her bills and take care of her shopping or other financial decisions.

Christopher Donati, an investigator with the Santa Barbara County Public Guardian's office, met with Petitioner and L.K., and spoke with Mother. At her interview, Petitioner was well groomed, polite, and direct, and told Donati that she did not want to leave her current home or to move away from her great grandmother or other family members. Donati believed that the current investigation was unusual, because Petitioner understood the concept of a conservatorship and was doing fairly well in the home, with no substantiated allegations of abuse or other issues.

Donati spoke with Mother and asked her what she was hoping to accomplish with a conservatorship, and understood that she was hoping to move Petitioner and have her attend a different educational institution where she (Mother) resides. As a result, Donati believed that there was no clear plan of action as to how the conservatorship would benefit Petitioner, or provide medical treatment that she was not already receiving, and that there would be no current benefits to Petitioner from a conservatorship.

LEGAL ARGUMENT

I. THIS COURT SHOULD GRANT REVIEW TO DETERMINE THE MANNER IN WHICH THE "CLEAR AND CONVINCING EVIDENCE" STANDARD IS TO BE APPLIED IN CONSERVATORSHIP APPEALS, INCLUDING WHETHER A CONSERVATORSHIP MAY BE IMPOSED BASED SOLELY OR PRIMARILY ON THE TESTIMONY OF THE PERSON SEEKING A CONSERVATORSHIP.

This Court should grant the present petition, and again review the most recent decision by the Court of Appeal in this case, to bring needed clarity to the law governing the application of the "clear and convincing standard" in conservatorship proceedings, which were left unresolved by this Court's prior opinion. Although this Court made clear that the clear and convincing standard applied on appeal, and that the appellate court must incorporate that standard in determining the sufficiency of the evidence supporting the imposition of a conservatorship, neither this Court nor the conservatorship

statute define or indicate the nature or type of evidence that might be found to be clear and convincing. The result of such lack of guidance – i.e. the likelihood that conservatorships will be imposed and that individuals will suffer the loss of their personal autonomy needlessly or arbitrarily – is all too evident in this case, in which the Court of Appeal, despite being admonished as to the proper standard of review, merely reissued its original opinion with no further analysis or indication that it had engaged in the required evaluation, and which continued to base its opinion affirming the trial court's conservatorship order on demonstrably flawed evidence that cannot reasonably be said to be "clear and convincing." As a result, this Court should again grant review, again reverse the Court of Appeal's decision, and provide sufficient guidance as to the nature and type of "clear and convincing" evidence on which a conservatorship can legitimately be based.

A. Under The Conservatorship Statute, The Need For A Conservator Must Be Proven By Clear And Convincing Evidence, Which Requires A "High Probability" Of Truth In Light Of The Critical Societal Interests Involved.

Probate Code section 1801, subdivision (a) provides in pertinent part that "[a] conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter." Under section 1801, subdivision (e), "[t]he standard of proof for the appointment of a conservator pursuant to this section shall be clear and convincing evidence." That standard has been defined

as requiring a "finding of high probability," i.e. that the evidence be "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*See, e.g., In re Angelia P.* (1981) 28 Cal.3d 908, 919, quoting *Sheehan v. Sullivan* (1899) 126 Cal. 189, 193; *see also Colorado v. New Mexico* (1984) 467 U.S. 310, 316 [104 S.Ct. 2433; 81 L.Ed.2d 247] (stating that "clear and convincing evidence" exists where the "ultimate factfinder [has] an abiding conviction that the truth of its factual contentions are 'highly probable'"); CACI No. 201.)

In *O.B. I,* this Court relied on the articulation of the standard contained in *Angelia P.* Further, although acknowledging that the clear and convincing evidence standard "does not lend itself readily to definition," noted that the issue involved "how strongly the minds of the trier or triers of fact must be convinced that the facts are as contended by the proponent are true," and further stated as follows:

> "Where clear and convincing proof is required, the proponent must convince the jury or judge, as the case may be, that it is *highly probable* that the facts which he asserts are true. He must do more than show that the facts are probably true."

O.B. I, 9 Cal.5th at pp. 998-99, quoting Comment, Evidence: Clear and Convincing Proof: Appellate Review (1944) 32 Cal.L.Rev. 74, 75 (emphasis in original). This Court further noted that the clear and convincing evidence standard applied where particularly important individual interests or rights, such as the termination of parental rights, involuntary commitment,

and deportation) are at stake. (*O.B. I,* 9 Cal.5th at p. 999.)

B. This Court Should Grant Review Because, As This Court Previously Observed, The "Clear And Convincing Evidence" Standard Does Not Readily Lend Itself To Definition, And Because The Court Of Appeal's Most Recent Decision Fundamentally Disregarded Both The Importance Of The Individual Rights Involved And The Nature Of The Evidence Presented In Support Of A Conservatorship.

Here, this Court should again grant review, to resolve issues left open in *O.B. I*, and to provide needed guidance to trial and appellate courts as to the quantum of proof required to meet the "clear and convincing evidence" standard in conservatorship proceedings. Although this Court in *O.B. I* resolved a long-standing division of authority as to whether that standard applied on appellate review, it left open the question of what forms of proof are appropriate to meet the clear and convincing evidence standard. Instead, and as noted above, this Court correctly observed that the standard "does not lend itself readily to definition." However, appellant respectfully suggests that it is both necessary and appropriate, for several reasons, for this Court to attempt such a definition, and provide guidance as to the nature and type of evidence that would meet the clear and convincing standard.

First, as indicated above and in *O.B. I*, the "clear and convincing evidence" standard requires a "high probability" of proof, and reflects a societal determination that certain individual rights – in this case, the right of personal autonomy – are

sufficiently important to warrant a higher degree of certainty and a higher burden of proof. It is therefore incongruous for the legislature and the courts to on the one hand impose such a standard while on the other providing little or no guidance as to how that standard should be interpreted or implemented.

Second, the lack of authoritative guidance as to the nature and type of evidence that would be considered "clear and convincing" in the context of a conservatorship proceeding essentially leaves it to individual trial and appellate courts to define that standard in a particular case. That result would create a crazy quilt of arbitrary and inconsistent determinations among different jurisdictions, and the imposition of conservatorships in cases where the supporting evidence is neither "clear" nor "convincing." That prospect is evident from the present case, in which the appellate court, following remand, essentially merely reissued its prior decision while purporting to apply the "clear and convincing" standard on review. The appellate court did so without requesting additional briefing or argument, and despite the fact that the petitioner Mother presented only minimal evidence, all of which suffered from basic flaws that were exposed in the court's most recent opinion. The only direct evidence by Mother consisted of her own testimony, which was clearly biased and self-serving, and was contradicted by several third party experts. Moreover, although the Court of Appeal emphasized that Mother had "nearly daily" contact with petitioner for the past ten years, it ignored the fact that petitioner resided during that time not with Mother, but with her

great-grandmother L.K., who opposed conservatorship and testified that petitioner was not in need of it. Similarly, the court artificially minimized the testimony of two experts that had examined petitioner and determined that she did not require conservatorship by observing that their opinion differed from those contained in the reports of two other experts, who did not testify at trial, and whose reports were not introduced as evidence. (See Slip Opinion, pp. 12-13.)

In sum, the evidence at trial was that: (1) one of petitioner's relatives believed she required a conservatorship while another, with considerably greater contact, believed she did not; and (2) two neutral third party experts personally testified that petitioner did not require conservatorship and explained the reasons for their opinions, while two other experts, whose opinions were not explained, through either live testimony or through written reports, did not. That evidence at best created a conflict, and plainly did not constitute "clear and convincing evidence" so as to justify the drastic step of imposing a conservatorship on a high-functioning adult autistic woman. As a result, although this Court's decision in *O.B. I* provided needed clarity as to the application of the "clear and convincing evidence" in conservatorship appeals, this Court can and should take the additional step of again granting review and providing guidance as to the nature and type of evidence required to meet that standard.

II. THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER THE TRIAL COURT, IN FINDING THAT NO LESS RESTRICTIVE ALTERNATIVE TO CONSERVATORSHIP EXISTS, MUST EXPRESSLY STATE THE REASONS FOR ITS DETERMINATION, INCLUDING THE SPECIFIC ALTERNATIVES CONSIDERED AND THE REASONS WHY THEY WERE NOT FEASIBLE.

This Court should additionally grant review to resolve a further remaining question under the conservatorship statute, which again is squarely presented by the Court of Appeal's most recent decision in this case. In its decision, the appellate court rejected petitioner's arguments and held that the trial court had satisfied its responsibilities under the Probate Code merely by stating that it had considered and rejected less restrictive alternatives prior to ordering conservatorship. That holding, however, ignores the recognition that conservatorship results in a significant deprivation of personal liberty and loss of autonomy, and is to be ordered only as a last resort, i.e. where there are no reasonable, less restrictive alternatives. Those principles are reflected not only in the statutory requirement that the trial court make an express finding that no less restrictive alternatives exist, but also in the separate and independent statutory requirement that the petitioner both plead and prove, by clear and convincing evidence, that that is the case. By holding, as it did, that the trial court discharges its duty merely by a conclusory statement that it has considered and rejected such alternatives – which is already contained on the preprinted Judicial Council form ordering conservatorship – the Court of Appeal gave unduly

short shrift to less drastic alternatives to conservatorship, which this Court, by again granting review, can and should correct.

A. Under The Probate Code, The Petitioner Must Plead And Prove, And The Trial Court Must Expressly Find, That There Is No Less Restrictive Alternative To The Imposition Of A Conservatorship.

Probate Code section 1800.3, subdivision (a) provides that a trial court may appoint a conservator of the person upon a showing of sufficient need and the fulfillment of the other statutory requirements. However, subdivision (b) provides that "[n]o conservatorship of the person or of the estate shall be granted by the court unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee." In addition, Probate Code section 1821, subdivision (a) requires that a person seeking to impose a conservatorship to file certain supplemental information, beyond the allegations contained in the conservatorship petition. Specifically, in addition to information with respect to the proposed conservatee's inability to properly provide for his or her needs for physical health, food, clothing, and shelter (subdivision (a)(1), and the ability of the proposed conservatee to live in the residence while under conservatorship (subdivision (a)(2)), the petitioner in a conservatorship proceeding must provide information as to "[a]lternatives to conservatorship considered by the petitioner or proposed conservator and reasons why those alternatives are not available." (Probate Code section 1821, subdivision (a)(3).)

B. This Court Should Grant Review To Clarify That The Trial Court, In Issuing A Conservatorship Order, Must Identify The Less Restrictive Alternatives That It Considered, And The Reasons For Not Selecting Those Alternatives.

Here, the appellate court, in its most recent decision, rejected petitioner's argument that the trial court failed to consider the clear availability of less restrictive alternatives to a conservatorship. (Slip Opinion, pp. 14-15.) In doing so, the court did not cite any testimony or other evidence mentioning any such alternatives or indicating that the court in fact considered them. Instead, the court based its decision merely on the trial court's conclusory statement to that effect, and its presumption that the court followed the law. (*Id*.) Petitioner respectfully suggests, however, that such a conclusory statement, for several reasons, is inadequate to fulfill the above statutory requirements, and to ensure that less restrictive alternatives are, in fact, considered prior to imposing a conservatorship.

First, the court's opinion does not indicate where or under what circumstances the trial court made its express finding. As a result, it is highly probable that the "finding" occurred as a result of the issuance of the formal conservatorship order on the applicable Judicial Council form (No. GC-340), which contains a preprinted statement to that effect. Petitioner respectfully suggests that consideration of less restrictive alternatives to a conservatorship, and the requirement of an express statement under Probate Code section 1800.3, subdivision (b) is far too

important to be satisfied by a preprinted form that does not even require the court to check a box on the form.

Second, the requirement of an express statement under section 1800.3, subdivision (b), while significant, constitutes merely part of the equation. In addition, and as shown above, Probate Code section 1821, subdivision (a)(3) requires an affirmative showing by the petitioner as to possible less restrictive alternatives and why those alternatives are not feasible. As a result, consideration of the availability and feasibility of less restrictive alternatives is not merely a clerical requirement, but an essential element of proof under the conservatorship statute. Further, such consideration raises due process concerns, in light of the principle that government actions that infringe on fundamental constitutional rights must both serve a compelling state interest and use the least restrictive means to achieve that interest. (*See, e.g., R.A.V. v. St. Paul* (1992) 505 U.S. 377, 395 [112 S. Ct. 2538; 120 L. Ed. 2d 305].)

In light of the above, petitioner respectfully requests that this Court grant review to determine whether a trial court must, in addition to the conclusory statement found here, specifically identify the less restrictive alternatives to conservatorship that it considered, and the reasons for rejecting those alternatives. Such review is necessary and appropriate to provide guidance to the trial courts, to ensure proper consideration of alternatives that do not involve the type of drastic infringement upon personal rights of autonomy and liberty as a conservatorship, and to prevent the imposition of conservatorships in situations such as that involved

in this case.

DATED: January 4, 2021

GERALD J. MILLER
Attorney at Law

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Attorney for Objector, Appellant,
and Petitioner O.B.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.360(b)(1) of the California Rules of Court, the undersigned counsel states that the foregoing petition contains 5,465 words, according to the word count of the computer program used to prepare the petition.

DATED: January 4, 2021

GERALD J. MILLER
Attorney at Law

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Attorney for Objector, Appellant, and Petitioner O.B.

EXHIBIT A (COURT OF APPEAL OPINION)

Filed 12/2/20; On remand

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Conservatorship of the Person of O.B.	2d Civil No. B290805 (Super. Ct. No. 17PR00325) (Santa Barbara County)
T.B. et al., as Coconservators, etc., Petitioners and Respondents, v. O.B., Objector and Appellant.	OPINION ON REMAND

In *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1012, the California Supreme Court reversed the judgment rendered in our prior opinion filed on February 26, 2019. The court remanded the cause to us with directions "to reevaluate the sufficiency of the evidence in light of [its] clarification" of how an appellate court should review a "finding made by the trier of fact pursuant to the clear and convincing standard." (*Id.*, at pp. 995, 1012.) As directed, we have reevaluated the sufficiency of the evidence in accordance with the Supreme Court's clarification of the standard

of review. We conclude that the evidence is sufficient.

O.B. is a person with autism spectrum disorder (autism).[1] She appeals from an order establishing a limited conservatorship of her person and appointing respondents T.B., her mother (mother), and C.B., her elder sister, as conservators. Appellant's principal contentions are (1) the probate court acted in excess of its jurisdiction by modifying her special education plan, and (2) the evidence is insufficient to support the probate court's findings.

A person with autism is not automatically a candidate for a limited conservatorship. Each case requires a fact-specific inquiry by the probate court. "Autism is known as a 'spectrum' disorder because there is wide variation in the type and severity of symptoms people experience." <https://www.nimh.nih.gov/health/topics/autism-spectrum-disorders-asd/index.shtml> [as of Nov. 17, 2020], archived at <https://perma.cc/UQ4C-5VE3>. Based on the facts here, we affirm the order establishing a limited conservatorship of appellant's person.

Factual and Procedural Background

The limited conservatorship was imposed after a contested evidentiary hearing (also referred to herein as "trial"). Our

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[1] "Autism spectrum disorder is characterized by persistent deficits in social communication and social interaction across multiple contexts, including deficits in social reciprocity, nonverbal communicative behaviors used for social interaction, and skills in developing, maintaining, and understanding relationships. In addition to the social communication deficits, the diagnosis of autism spectrum disorder requires the presence of restricted, repetitive patterns of behavior, interests, or activities." (American Psychiatric Assn., Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013) p. 31.)

summary of the facts is based on evidence presented at the trial in the form of testimony and exhibits. We disregard respondents' summary of the facts based upon reports and declarations that were neither offered nor received in evidence. During the parties' closing argument, the probate court made clear that it would consider only evidence presented at the trial: "We have had lengthy proceedings outside of the evidentiary proceeding, so you need to limit your arguments to the record inside of the evidentiary proceeding." (See also Prob. Code, § 1046 ["The court shall hear and determine any matter at issue and any response or objection presented, *consider evidence presented*, and make appropriate orders" (italics added)].)[2] Moreover, because the evidentiary hearing was contested, declarations were inadmissible pursuant to section 1022.[3]

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[2] Unless otherwise stated, all statutory references are to the Probate Code.

[3] Section 1022 provides, "An affidavit or verified petition shall be received as evidence when offered in an uncontested proceeding under this code." "[S]ection 1022 authorizes the use of declarations only in an 'uncontested proceeding.'" (*Estate of Bennett* (2008) 163 Cal.App.4th 1303, 1309.) "When a petition is contested, as it was here, . . . absent a stipulation among the parties to the contrary, each allegation in a verified petition and each fact set forth in a supporting affidavit must be established by competent evidence. [Citations.]" (*Estate of Lensch* (2009) 177 Cal.App.4th 667, 676.) On the other hand, a declaration or report received in evidence without objection at a contested hearing may properly be considered as competent evidence. (See *Estate of Nicholas* (1986) 177 Cal.App.3d 1071, 1088.) Here, no one objected to the exhibits received in evidence.

In August 2017 respondents filed a verified petition requesting that they be appointed limited conservators of appellant's person. The petition alleged that appellant had been diagnosed with autism and "is unable to properly provide for . . . her personal needs for physical health, food, clothing, or shelter."

When the petition was filed, appellant was 18 years old. She was living with her great-grandmother in Lompoc, County of Santa Barbara, and was repeating the 12th grade at Cabrillo High School. She had been living with her great-grandmother since she was three or four years old. Mother resided in Orange County.

An expert witness, Dr. Kathy Khoie, testified on appellant's behalf. Khoie, a psychologist, opined that appellant "is not a candidate for conservatorship." Khoie explained: "My opinion is based on her intellectual functioning level. I believe that [she] has at least average intelligence. She's high average in her non-verbal functioning." "[S]he is verbal. She's able to talk about her likes and dislikes." In her report, Khoie concluded that although appellant "has a diagnosis of Autism Spectrum Disorder," she "has the potential to live independently with support. She does not require a high level of supervision and decision making by a conservator."

In her report Khoie said she had reviewed the "Conservator Evaluation" report of the "Tri-Counties Regional Center." The regional center report, which was neither offered nor received in evidence, was prepared by David Jacobs, Ph.D. Section 1827.5, subdivision (a) provides that the proposed limited conservatee, "with his or her consent, shall be assessed at a regional

center . . . . The regional center shall submit a written report of its findings and recommendations to the court."[4] Khoie stated: "Dr. Jacobs recommended limited conservatorship concerning habilitation, education/training, medical and psychological services; access to confidential records, and the right to enter into a contract. Recommended power for education and medical treatment were reiterated. Dr. Jacobs did not recommend conservatorship for decision regarding place of residence." Since Dr. Khoie's report was received in evidence without objection, we may consider her report's reference to Dr. Jacobs' recommendations even though Dr. Jacobs' report was not received in evidence. (See *Estate of Nicholas*, *supra*, 177 Cal.App.3d at p. 1088.)

Appellant's other expert witness, Christopher Donati, is the probate investigator for the Santa Barbara County Public Guardian's Office. Pursuant to a "non-court ordered" referral, he met with appellant and evaluated her "to determine if conservatorship was appropriate." Appellant said she "was opposed to the idea of a conservatorship." She wanted to continue living with her great-grandmother in Lompoc and continue attending Cabrillo High School. Donati spoke to

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[4]See Cal. Conservatorship Practice (Cont.Ed.Bar 2018 update) § 22.7 D. Role of Regional Center: "The regional center plays a very significant role in the establishment of a limited conservatorship. Before a limited conservatorship is created, the regional center performs an assessment of the proposed limited conservatee and submits a written report of its findings and recommendations to the court. [Citations.]" "[T]he regional center report is required before the court can proceed to decide the petition for a limited conservatorship."

mother, who said "she was hoping to move [appellant] and have her attend a different educational institution and begin regional services where [mother] resides [in Orange County]." Donati opined that he did not "see any . . . way that the conservatorship would benefit [appellant] at this point." His primary concern was the removal of appellant from her great-grandmother's home. The removal could cause her to "experience trauma."

Donati reviewed Dr. Jacobs' regional center report as well as the "capacity declaration by Dr. [Cindy] Blifeld." Her declaration was neither offered nor received in evidence, but Donati testified that Dr. Blifeld's declaration contained the required "medical component [for a limited conservatorship] where a medical professional is in support of a conservatorship and [declares] that they feel that the . . . potential conservatee lacks capacity." Dr. Blifeld "did feel that . . . [appellant] lacked capacity." Donati continued: "There seemed to be conflicting reports where certain professionals felt . . . that she did lack capacity. And I believe Dr. Khoie was a professional that felt like she did have capacity and the conservatorship was not appropriate. So there seemed to be conflicting information."

L.K. is appellant's 82-year-old great-grandmother. She testified that, since the conservatorship proceedings began, appellant has been "a nervous wreck." L.K. opined that appellant does not need a conservatorship and can take care of herself "[a]s much as any teenager can." She also opined that it was "a bad idea for [appellant] to live with her mom and her dad and her sisters" because "[s]he's afraid of them. She's afraid that she won't be able to come back and see me." "Her mother yells and swears at her and takes her electronics . . . away from her."

Mother testified: For the past 10 years, she has had "[n]early daily" contact with appellant. Mother lives with appellant's father and two sisters in a "large five bedroom home" in Orange County. She "filed the petition to basically protect [appellant] from the school [Cabrillo High School in Lompoc] and then long term just [to] protect her." Appellant "has had . . . like 160 missed class periods, but she still manages to get passing grades, even high grades, in all of her academics." Mother referred to the grades as "'get this kid out of my class' grades." "[S]he's not in class to earn the grades. She's not producing work to earn the grades." Sometimes the school placed appellant in detention for the entire day.

If the requested conservatorship were established, mother said appellant would attend El Modena High School in the Orange County School District. Mother asserted that this school is "one of the highest rated schools in the district and has a really good reputation for their special education program." Mother spoke to the "special education coordinator of the district."

Mother further testified: Appellant needs guidance in making routine decisions and assistance in performing daily tasks. Appellant "really struggles with taking in information needed to make decisions." Mother needs to ask her, "'Are you going to wear a sweater today? Are you putting on clean underwear? Are you going to brush your hair? Did you brush your teeth? Did you take your pills? . . . Is it hot out? Do you need to wear shorts?'" Appellant asks mother, "'Can you lay my clothes out for me. . . . Can you turn the shower on.'" Mother, appellant's father, or her great-grandmother "handles her medication." Appellant cannot cook or do her laundry. Appellant has "behavioral outbursts" where she will "run off or scream and

yell." She "screams and yells and fights and gets her way no matter what she does, . . . and it stresses her out and makes her upset."

Mother also testified that appellant is too trusting of other people. She will trust "people who are just nice to her . . . . She will go off with people she shouldn't and trust people she shouldn't. It's dangerous." Two years ago, appellant "ran off" to see "Sponge Bob on Hollywood Boulevard." She trusts Sponge Bob.[5] She also trusts "all of her family and anyone at school, anyone she's seen before, people at restaurants, restaurant staff." If a person she trusts asks her to sign a document, "she'll just sign it no matter what." If "you're explaining [the document], she doesn't really care."

Tammi L. Faulks, appellant's guardian ad litem, filed an action against the Lompoc Unified School District claiming that appellant had not "received the education to which she was entitled." Faulks sought to "get the school district to either set aside a compensatory education fund [for appellant] or allow [her] to continue to obtain high school services and all of the benefits that go with that until she's age 22." Faulks told the court she was "very worried that [school employees] seem to . . . do whatever it takes to push [appellant] out of the school regardless of whether she gets a proper education."

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[5]Pursuant to Evidence Code sections 452, subdivision (h) and 459, we take judicial notice that "SpongeBob is depicted as being a good-natured, optimistic, naïve, and enthusiastic yellow sea sponge residing in the undersea city of Bikini Bottom alongside an array of anthropomorphic aquatic creatures." <https://en.wikipedia.org/wiki/SpongeBob_SquarePants_(character)> [as of Nov. 17, 2020], archived at <https://perma.cc/6BRH-UTRQ>.

During closing argument, respondents' counsel stated that appellant "has had 312 unexcused class absences this year, so far, and numerous suspensions." No one objected to this statement. Appellant's guardian ad litem said, "[I]t's true that she's missed over 300 class periods . . . this school year."

The trial court found that a limited conservatorship "is appropriate" and that appellant "is unable properly to provide for . . . her personal needs for physical health, food, clothing, or shelter." The court also found that she "lacks the capacity to give informed consent for medical treatment." The court remarked that appellant's treatment at Cabrillo High School has "been a failure of the education system for her." The court characterized this remark as "just dicta because the County of Santa Barbara Education Office" and the "Lompoc Unified School District [are] not . . . part[ies] to this action." None of the parties requested a statement of decision.

Limited Conservatorship

"A limited conservator of the person . . . may be appointed for a developmentally disabled adult. A limited conservatorship may be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator." (§ 1801, subd. (d).)

Court's Alleged Lack of Jurisdiction to Modify Appellant's Educational Plan

Section 2351.5, subdivision (b)(7) provides that, "in its order appointing the limited conservator," the probate court may grant to the conservator the power to make "[d]ecisions concerning the education of the limited conservatee." The probate court expressly granted this power to respondents.

Appellant argues: The probate court's "jurisdiction was preempted by the Federal and State Education Statutes." (Bold and capitalization omitted.) "[T]he [probate] court . . . lacked the ability to modify or alter the special education plan instituted by the local school district under requirements established under federal and state education statutes." "As a result, . . . the [probate] court's order granting [respondents'] petition, which prevented [appellant] from . . . graduating from Cabrillo High School, and resulted in the removal of [appellant] from both her school and her home, exceeded the court's jurisdiction and was legally invalid."

Appellant's argument lacks merit. The probate court did not modify her special education plan. As authorized by section 2351.5, subdivision (b)(7), the court merely granted to the limited conservators the power to make decisions concerning her education. The court stated, "I'm not involved in her education, really, at all, except to the extent that if I impose the . . . limited conservatorship, . . . that might affect who gets to talk about her education."

Appellant has not cited authority prohibiting the establishment of a limited conservatorship solely because it may result in an adult student's transfer from a school that has failed to meet her educational needs. "'It is a fundamental rule of

appellate review that the judgment appealed from is presumed correct and ""'all intendments and presumptions are indulged in favor of its correctness.'" [Citation.]" [Citation.] An appellant must provide an argument and legal authority to support his contentions. . . ." (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799.)

Substantial Evidence Supports the Establishment of a Limited Conservatorship of Appellant's Person

At the hearing on a petition for appointment of a limited conservator of the person, the court shall make the appointment "[i]f the court finds that the proposed limited conservatee lacks the capacity to perform *some*, but not all, of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources . . . ." (§ 1828.5, subd. (c), italics added.) Appellant contends that the evidence is insufficient to support the required findings.

The "clear and convincing" standard of proof applies to the appointment of a limited conservator. (§ 1801, subd. (e).) "[A]n appellate court must account for the clear and convincing standard of proof when addressing a claim that the evidence does not support a finding made under this standard. When reviewing a finding that a fact has been proved by clear and convincing evidence, the question before the appellate court is whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true. In conducting its review, the court must view the record in the light most favorable to the prevailing party below and give appropriate deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in

the evidence, and drawn reasonable inferences from the evidence." (*Conservatorship of O.B.*, *supra*, 9 Cal.5th at pp. 1011-1012.

The record as a whole contains substantial evidence, in the form of mother's testimony, from which a reasonable factfinder could have found it highly probable that appellant "lacks the capacity to perform *some* . . . of the tasks necessary to provide properly for . . . her own personal needs for physical health, food, clothing, or shelter, or to manage . . . her own financial resources . . . ." (§ 1828.5, subd. (c), italics added.) "The testimony of one witness may be sufficient to support the findings." (*Conservatorship of B.C.* (2016) 6 Cal.App.5th 1028, 1034.)

We recognize that appellant's experts, Dr. Khoie and Donati, opined that a limited conservatorship is inappropriate. But "[a]n appellate court . . . will sustain the trial court's factual findings if there is [the requisite] substantial evidence to support those findings [under the clear and convincing standard of proof], even if there exists evidence to the contrary. [Citation.]" (*Conservatorship of Amanda B.* (2007) 149 Cal.App.4th 342, 347.) Because mother was in nearly daily contact with appellant for the past 10 years, mother was in a far better position than Dr. Khoie and Donati to evaluate appellant's capacity to function independently.

Although mother's testimony alone is sufficient, additional evidence supports the trial court's findings. Dr. Khoie's and Donati's opinions conflict with the regional center evaluation prepared by Dr. Jacobs, who recommended a limited conservatorship. Their opinions also conflict with Dr. Blifeld's evaluation of appellant. Donati testified that Dr. Blifeld had provided the required "medical component [for a limited

conservatorship] where a medical professional is in support of a conservatorship and [declares] that they feel that the . . . potential conservatee lacks capacity."

Moreover, in deciding to appoint a limited conservator of appellant's person, the probate court took into account its personal observations of appellant during the proceedings. The court stated: "I've been involved in numerous hearings, and [appellant] has been at all of them or most of them. So in addition to some of the different witnesses[,] I am entitled to base my decision . . . in part on my own observation of [appellant] at the proceedings."

We reject appellant's assertion that "[t]he fact that the trial court 'observed' [appellant] - who was sitting right in front of him - over a ten month period [citation], proves nothing." The court's personal observations of appellant contribute to the substantial evidence in support of its findings. (See *People v. Rodas* (2018) 6 Cal.5th 219, 234 ["when a competency hearing has already been held, [in determining whether to conduct a second competency hearing] 'the trial court may appropriately take its personal observations into account in determining whether there has been some significant change in the defendant's mental state,' particularly if the defendant has 'actively participated in the trial' and the trial court has had the opportunity to observe and converse with the defendant"].) The probate court had the opportunity to observe and converse with appellant. (See also *People v. Fairbank* (1997) 16 Cal.4th 1223, 1254 ["substantial evidence, including the trial court's own observations of defendant, supports the court's factual determination that defendant was not intoxicated at the time he entered his guilty plea and that his plea was knowing, intelligent, and voluntary"].)

The Probate Court Did Not Violate Principles of Conservatorship Law

Appellant claims that the probate "court's actions and orders violated basic principles under the State Conservatorship Statute." (Bold and capitalization omitted.) "[O]f particular significance, the [probate] court's conservatorship order ignored or disregarded the wishes and desires of [appellant] herself, contrary to both the letter and the spirit of conservatorship statutes."

The probate court considered appellant's personal preferences. Although appellant did not testify, the court permitted her to explain at length in open court why she wanted to stay in Lompoc and attend Cabrillo High School. The court was not required to accede to her wishes.

Appellant argues that the probate court "failed to consider the clear availability of less restrictive alternatives to a conservatorship." (Bold and capitalization omitted.) "No conservatorship of the person . . . shall be granted by the court unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee." (§ 1800.3, subd. (b).) The probate court expressly made this exact finding. Appellant does not cite authority requiring the court to set forth on the record the less restrictive alternatives to a conservatorship that it considered. "Because such express findings are not required, we presume the court followed the law in making its determination [citation], including a consideration of [less restrictive alternatives]." (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 698-699; see also *Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554, 563 ["it is presumed that the

court followed the law. . . . The mere fact that the court did not explicitly refer to [Cal. Rules of Court,] rule 203.5(e), when the statute contains no such requirement does not support the conclusion that it was ignored"].)

The Probate Court Did Not Prejudge the Case

Appellant contends, "[T]he statements and actions by the [probate] court demonstrate that it had already prejudged the case, and the purported need for a conservatorship." In support of her contention, appellant refers to the court's remarks at a pretrial hearing concerning "[a] placement decision," i.e., "whether or not [appellant] stays at Cabrillo [High School] or she goes down to a high school in Orange County." The court said appellant's counsel should "be prepared to show cause why I shouldn't impose a permanent conservatorship on the date of the [upcoming trial] because . . . . I believe that the mother has shown a prima facie case [at the pretrial hearing] of why a permanent conservatorship is probably appropriate." "A prima facie showing is one that is sufficient to support the position of the party in question." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851.) The court continued, "So . . . you need to make sure that if you object to that, . . . you make it clear to both sides and to the Court on that day [the day of trial] that you don't want a conservatorship because when that day is over, I'm going to probably impose one, unless you change my mind." Appellant's counsel replied, "Understood, Your Honor."

The probate court's statements do not demonstrate that it prejudged the limited conservatorship issue before hearing the evidence at trial. As a courtesy to appellant, the court informed her counsel that at the pretrial hearing mother had made a prima facie case that a limited conservatorship "is *probably*

appropriate." (Italics added.) Thus, the court warned counsel that at trial she should be prepared to present evidence showing that a limited conservatorship is not appropriate. The court made clear that it would not make up its mind until it had heard all of the evidence.

Disposition

The order establishing a limited conservatorship of appellant's person and appointing respondents as conservators is affirmed. The parties shall bear their own costs on appeal.

CERTIFIED FOR PUBLICATION.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

James Rigali, Judge

Superior Court County of Santa Barbara

Gerald J. Miller, under appointment by the Court of Appeal for Appellant.

Law Offices of Laura Hoffman King and Laura Hoffman King; Tardiff Law Offices and Neil S. Tardiff for Respondents.

PROOF OF SERVICE

I am over the age of 18 years of age, and am not a party to the within action; my business address is P.O. Box 543, Liberty Hill, TX 78642. On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Liberty Hill, Texas, addressed as follows:

DATE OF SERVICE: January 4, 2021

DOCUMENT SERVED: PETITION FOR REVIEW

PERSONS SERVED:
See Attachment A

I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Liberty Hill, Texas.

PROOF OF SERVICE BY ELECTRONIC SERVICE

(Cal. Rules of Court, Rules 2.251(i)(A)-(D), 8.71(f)(1)(A)-(D))

I additionally declare that I electronically served the foregoing document on all listed parties under the Court's True Service filing program.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 4, 2021 at Liberty Hill, Texas.

_____
GERALD J. MILLER

ATTACHMENT A – Service List

Tammi L. Faulks Guardian Ad Litem 937 Main Street, Suite 208 Santa Maria, CA 93454	Laura Hoffman King, Esq. Law Offices of Laura Hoffman King 241 S. Broadway, Suite 205 Orcutt, CA 93455 (Attorneys for Respondents Mother B. and Cleo B.)
Neil S. Tardiff, Esq. Tardiff Law Offices P.O. Box 1446 San Luis Obispo, CA 93401 (Appellate Counsel for Respondents)	Lana J. Clark, Esq. Law Office of Lana Clark 1607 Mission Drive, Suite 107 Solvang, CA 93463 (Trial Counsel for Respondents)
Susan Sindelar, Esq. Office of the Public Defender County of Santa Barbara 1100 Anacapa Street Santa Barbara, CA 93101 (Trial Counsel for Petitioner)	Jay Kohorn, Esq. California Appellate Project 520 S. Grand Ave., Fourth Floor Los Angeles, CA 90071
Clerk, Superior Court County of Santa Barbara 1100 Anacapa Street Santa Barbara, CA 93121	Shaun P. Martin, Esq. University of San Diego School of Law 5998 Alcala Park, Warren Hall San Diego, CA 92110
Clerk, Court of Appeal Second Appellate District, Division Six 200 East Santa Clara Street Ventura, CA 93001	Thomas Coleman, Esq. 555 S. Sunrise Way, Suite 205 Palm Springs, CA 92264