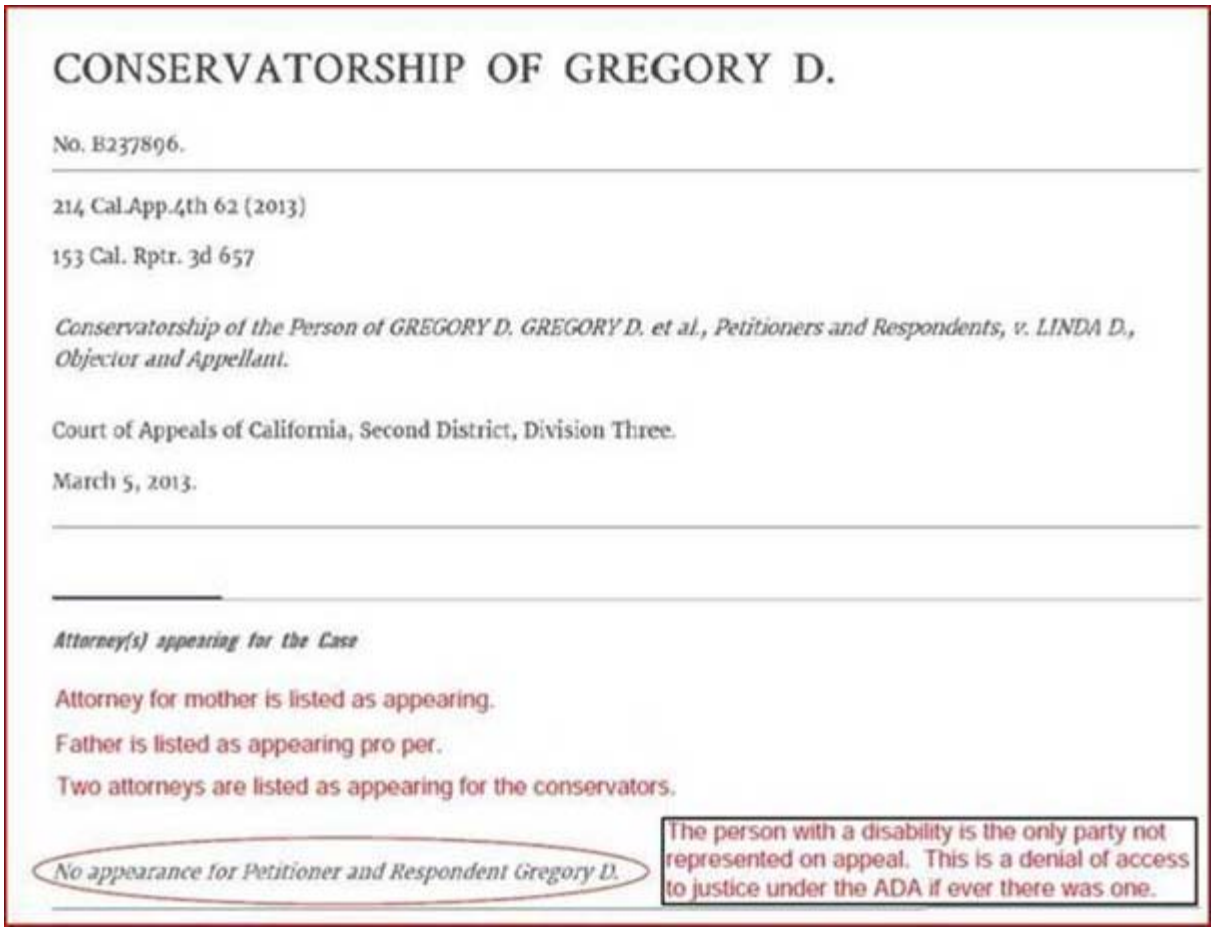
**Developmental Disability Should Not Become Appellate Invisibility**



CONSERVATORSHIP OF GREGORY D.

No. B237896.

214 Cal.App.4th 62 (2013)

153 Cal. Rptr. 3d 657

*Conservatorship of the Person of GREGORY D. GREGORY D. et al., Petitioners and Respondents, v. LINDA D., Objector and Appellant.*

Court of Appeals of California, Second District, Division Three.

March 5, 2013.

*Attorney(s) appearing for the Case*

Attorney for mother is listed as appearing.

Father is listed as appearing pro per.

Two attorneys are listed as appearing for the conservators.

*No appearance for Petitioner and Respondent Gregory D.*

The person with a disability is the only party not represented on appeal. This is a denial of access to justice under the ADA if ever there was one.

This is a call to action by disability rights and disability services organizations and agencies. All such groups are invited to add their names to letters that will be sent by Spectrum Institute to several public officials and agencies in California. The letters will ask these officials to take steps to ensure access to appellate justice for litigants with cognitive or developmental disabilities. We especially want California and national organizations to participate.

The case of *Gregory D*. serves as an example of how the rights of someone with a disability can be violated by a trial court judge and then, instead of reviewing the merits of the issues, an appeals court throws the case out on the ground that a surrogate cannot advocate for the person with a disability even though he lacks the ability to advocate for himself and his court-appointed attorney in the trial court surrendered, rather than defended, his rights.

Please read the information below and the attached op-ed article which appears in the Daily Journal legal newspaper on Monday, March 13, 2017. Pass this around to disability organizations. I hope to hear from people who want to join with us to press California officials to comply with the mandates of Title II of the ADA.

We would like to have many disability organizations join our letters to the Supreme Court, Judicial Council, State Bar, and Legislature, to ensure this type of ADA violation does not occur again in California. When an appellate court is considering an appeal involving the rights of a litigant with a cognitive or developmental disability, the court should appoint an attorney to represent the litigant in the appellate proceedings. If that does not occur, the court should, at the very least, allow third-party standing to ensure that the alleged violations of the rights of the person with such a disability are fully argued and reviewed. Neither of those options were used in the *Gregory D*. case. Gregory, therefore, was denied access to justice.

The Supreme Court should de-publish the Court of Appeal opinon denying third-party standing to Gregory's mother. Under Rule 979(d), the court has the authority to do so on its own motion at any time. The Judicial Council should adopt a court rule allowing third-party standing when there is an appeal involving the rights of a person with a cognitive or developmental disability and that person has not appeared in the appeal. The Legislature should pass "Gregory's Law" to clarify that third-party standing on appeal is allowed under these circumstances. The State Bar of California or its Commission on Access to Justice or both should support our requests to the Supreme Court, Judicial Council, and Legislature. The justices on the Court of Appeal should always appoint an attorney to represent a litigant who has a cognitive or developmental disability who has not appeared in the appeal when the case involves the rights of the person with such a disability. The ADA's mandate of access to justice requires these actions to be taken by public officials who are responsible for policy and practice involving appellate procedure. The nonprofit California Appellate Project should discuss these issues with the Administrative Office of the Courts so that CAP has a role in the future to assist the appellate courts in fulfilling their duties to ensure cognitively disabled litigants access to appellate justice under Title II of the ADA.

Any new court rule or legislation on third-party standing in appeals involving unrepresented litigants with cognitive or developmental disabilities could be narrowly crafted to deal with this problem while not creating new ones. Keep in mind that in more than 20 states, courts are not required to appoint an attorney at the trial court level in guardianship cases. In California, the courts should do so, but often do not. For example, one regional center is reporting that a large majority of its clients who are involved in conservatorship proceedings do not have an attorney. In these cases, it should go without question that a third party who notices violations of the conservatee's rights in the trial court proceeding should be given standing to initiate an appeal to bring the issues to the attention of a higher court. Unless third-party standing is given to initiate an appeal, once 60 days pass without a notice of appeal being filed the appellate court would lack jurisdiction to hear the case.

My own research in Los Angeles shows that even though attorneys are appointed in all initial proceedings, there is a pattern and practice of deficient performance. These attorneys generally do not object to the violation of their client's rights. They are relieved as counsel when the order is granted. They never file a notice of appeal. Therefore, the only way a higher court will ever be able to correct the many injustices that are occurring is if third-party standing is conferred on an interested person. Once the appellate court receives the record on appeal, it could appoint a new attorney to represent the conservatee on appeal. If such an appointment is not made, the ADA would require that someone be allowed to argue on behalf of the disabled litigant. So either third-party standing would end when an attorney is appointed on appeal, or it would continue so that a surrogate could present arguments. Such a procedure would be the type of modification of normal rules that Title II of the ADA contemplates. It would carry little or no cost to the state but have immense benefit to an individual litigant as well as to the entire class of conservatees.

The injustice in Gregory's case will spearhead our campaign to have public officials in California take the steps necessary to ensure access to appellate justice for litigants with cognitive disabilities. We hope that disability rights organizations and disability services agencies will lend their names to the letters we will send to these officials.

The facts of Gregory's case are disturbing. Over Gregory's repeated objections to visiting with his father – someone for whom he expressed fear – the trial court ordered Gregory to have extended visits anyway. The forced visitation has now gone on for years. Freedom of association and due process were ignored. Gregory's attorney in the lower court surrendered his client's rights. He made no objection on behalf of his *adult* client. He did not appeal. So Gregory's mother appealed in order to vindicate her son's constitutional rights. The Court of Appeal never reached the merits of those issues, instead rejecting the appeal on the ground that the mother lacked standing to appeal. To rub salt into the ADA wounds, the trial court attorney sat in the audience during oral arrgument and passively listened as his former client's rights were ignored by the appellate justices on the technical grounds of standing. This display of passive curiosity by Gregory's former attorney is appalling.

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Any organization that wants to give us permission to add its name to these letters, should send an email to me indicating their preliminary approval. A draft of the letters will be sent to participating organizations for final review before we add their names to the letters when they are sent to the designated officials. Contact: tomcoleman@spectruminstitute.org / Information: http://disabilityandabuse.org/whats-new.htm