STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2138

In re the Conservatorship of Virginia D. Anderson, Conservatee

Filed December 31, 2007
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-P2-00-002151

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Considered and decided by Randall, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

On appeal from an order correcting disbursements from the co-conservators' Second, Third, and Fourth Annual Accounts, appellant argues that the district court abused its discretion in: (1) denying attorney fees for co-conservator Stone's attorney in a related vulnerable-adult litigation; (2) reducing attorney fees incurred by co-conservators Stone and Taylor; and (3) reducing co-conservator Stone's mileage fees. Because the

district court did not abuse its discretion in correcting the disbursements from these annual accounts, we affirm.

FACTS

This appeal involves a contentious dispute between conservatee's daughters, co-conservator Bonnie Stone (appellant) and Deanna VandeNorth (respondent), concerning various expenses billed to conservatee's estate. The record reflects that the estate was modest, consisting primarily of conservatee's homestead in Mankato, Minnesota, where she lived at all times relevant to this appeal.

In 2000, appellant Bonnie Stone petitioned to be a conservator for her mother, conservatee Virginia Anderson. The district court appointed attorney Charles Singer as conservatee's attorney and later appointed Stone as co-conservator, along with a third-party co-conservator, Shawn M. Taylor. In 2001, Frederick Kopplin became the attorney for co-conservators Stone and Taylor.

In late 2002, the Minnesota Department of Human Services (DHS) conducted an investigation and found that conservatee was a vulnerable adult who suffered neglect at the hands of her caregiver and appellant. Stone and the caregiver appealed the finding to the Vulnerable Adult Management Review Panel. Attorney Marlene Garvis successfully represented Stone and the caregiver in the vulnerable-adult appeal, which resulted in DHS reversing its neglect determination.

In March 2003, respondent Deanna VandeNorth and another daughter of conservatee petitioned the district court to remove Stone and Taylor as co-conservators and to appoint petitioners as general conservators.

In April 2003, co-conservators Stone and Taylor filed their Second Annual Account with the district court. In this account, co-conservator Stone charged the estate $5,810 in accrued but unpaid mileage fees.

Through the end of 2003 and into 2004, the parties continued to dispute the petition to remove co-conservators Stone and Taylor. The parties also disputed whether a geriatric-case manager should be appointed for conservatee.

In April 2004, co-conservators Stone and Taylor filed their Third Annual Account. In this account, the estate paid $3,000 in attorney fees for Garvis's representation of Stone in the vulnerable-adult appeal. Stone also charged the estate $7,329.20 in accrued but unpaid mileage fees.

In August 2004, the district court dismissed the petition to remove co-conservators Stone and Taylor and declined to appoint a geriatric-case manager for conservatee.

In May 2005, co-conservators Stone and Taylor filed their Fourth Annual Account. In this account, the co-conservators charged the estate attorney fees of $2,086 from Singer's representation of the conservatee, $5,382 from Kopplin's representation of Stone and Taylor, and $11,171 from Garvis's representation of Stone in the vulnerable-adult appeal. The account also included a charge of $9,154.20 in mileage fees from Stone. This account reflected that over the course of three years Stone charged the estate a total of $22,293.40 in mileage fees.

Thereafter, respondent filed objections to several disbursements and accrued fees from the Second, Third, and Fourth Annual Accounts, including: (1) Garvis's attorney fees from the vulnerable-adult litigation of $14,171 from the Third and Fourth Annual

Accounts; (2) Singer's attorney fees of $7,200 from the Third and Fourth Annual Accounts; (3) Kopplin's attorney fees for representing Stone and Taylor in the dispute over appointing a geriatric-case manager of $5,382 from the Fourth Annual Account; and (4) Stone's mileage fees of $22,293.40 from the Second, Third, and Fourth Annual Accounts.

In February 2006, the referee filed an Order Allowing Accounts as Corrected. The order corrected portions of the Second, Third, and Fourth Annual Accounts as follows: (1) denied all attorney fees paid to Garvis from the Third and Fourth Annual Accounts; (2) reduced the attorney fees paid to Singer by $1,500 from the Fourth Annual Account; (3) reduced the attorney fees paid to Kopplin by $1,500 from the Fourth Annual Account; and (4) reduced the mileage fees paid to Stone to $3,796 for each accounting period. Singer and Kopplin filed motions to reconsider.

The referee denied the motions to reconsider, concluding: "The litigious actions of the conservators toward the rest of the Anderson family have not preserved the assets of Ms. Anderson. Instead no limit has been placed on the amount of attorney fees incurred to carry on a family dispute and to provide mileage for Ms. Stone."

Thereafter, the district court held a hearing and issued an order vacating the referee's reduction of Singer's attorney fees and affirming the Order Allowing Accounts as Corrected in all other respects. The district court concluded that the co-conservators, and not conservatee, benefited by Garvis's representation in the vulnerable-adult appeal and that the referee's decision to reduce Stone's "extraordinary mileage fees" and the co-conservators' attorney fees "was a sound one." This appeal follows.

DECISION

I

Appellant challenges the district court's (1) denial of all attorney fees for Garvis's representation of Stone in the vulnerable adult appeal; and (2) reduction of attorney fees for Kopplin's representation of co-conservators Stone and Taylor. This court reviews a district court's decision to award or deny attorney fees for an abuse of discretion. *In re Conservatorship of Malecha*, 607 N.W.2d 449, 451 (Minn. App. 2000). A probate court's determination of whether an attorney fee is reasonable is a question of fact this court analyzes for clear error. *In re Conservatorship of Moore*, 409 N.W.2d 14, 16 (Minn. App. 1987); *In re Conservatorship of Mansur*, 367 N.W.2d 550, 552 (Minn. App. 1985), *review denied* (Minn. July 11, 1985).

Denial of Garvis's attorney fees

Appellant disputes the district court's determination that the estate was not required to pay for Garvis's attorney fees of $14,171. Specifically, appellant argues that the district court erred in holding that because appellant personally benefited from Garvis's representation in the related vulnerable-adult appeal, the estate was not required to pay Garvis's attorney fees.

"When the court determines that other necessary services have been provided for the benefit of the ward or protected person by a lawyer . . ., the court may order fees to be paid from the estate of the protected person." Minn. Stat. § 524.5-502(b) (2006). Thus, to receive payment for attorney fees from the estate, the legal services rendered should have benefited the estate. *Mansur*, 367 N.W.2d at 552. The determination as to whether

the legal services were necessary under Minn. Stat. § 524.5-502(b) is a question of fact, which will not be set aside unless clearly erroneous. *In re Conservatorship of W.L.*, 552 N.W.2d 734, 737 (Minn. App. 1996).

Here, the district court adopted the referee's factual findings and conclusions that Stone was the beneficiary of Garvis's representation in the vulnerable-adult appeal and that Garvis's legal services were "unnecessary for the benefit of the ward." Further, the district court found that Stone "vigorously pursued reversal of the vulnerable adult report because . . . [she] is a schoolteacher and was . . . concerned about this appearing on her record." The district court further explained that the conservatee did not benefit from Garvis's representation because if the neglect finding had been allowed to stand, conservatee's "situation might well have continued with little change and a vastly smaller expenditure of her funds." These findings are supported by the record.

Nevertheless, appellant contends that under *In re Guardianship of Glenn*, 381 N.W.2d 77, 79–80 (Minn. App. 1986), *review denied* (Minn. Apr. 11, 1986), the estate should pay for Garvis's attorney fees because Stone was involved in the vulnerable-adult litigation only by virtue of her appointment as co-conservator. But in *Glenn*, the court ordered the estate to pay for the disputed attorney fees because there was no doubt that the attorney's services, which were performed as part of the estate's final accounting, "were rendered to the estate." *Id.* at 79. Here, the district court found that Garvis represented Stone due to Stone's "personal position[]" as a schoolteacher and not for the benefit of the estate or conservatee. Therefore, the district court did not abuse its

discretion under Minn. Stat. § 524.5-502 in denying payment of Garvis's attorney fees from the estate.

Appellant also argues that because the district court did not find that Stone acted in bad faith under Minn. Stat. § 524.5-502, the court erred in not ordering the estate to pay for Garvis's attorney fees. This argument misconstrues the statute. Minn. Stat. § 524.5-502(b) simply provides that if the district court finds that the conservator acted in bad faith, then the district court shall order that some or all of the attorney fees be borne by the conservator. The statute does not require that attorney fees be paid from the estate if the district court finds no bad faith on the part of the conservator. Irrespective of a finding of bad faith, an award of attorney fees from the estate under Minn. Stat. § 524.5-502(b) is proper only when the district court determines that the legal services rendered were necessary for the benefit of the estate. Although the district court did not find that Stone acted in bad faith, it properly denied payment from the estate for Garvis's attorney fees because the legal services rendered were not necessary for the benefit of the estate.

Lastly, appellant argues that the district court erred in relying on Minn. Stat. § 524.5-417(c)(4) (2006)—which addresses the inheritance of real estate—to deny payment of Garvis's attorney fees from the estate. Appellant is correct that the referee cited the wrong statute, but even when a district court cites the wrong statute, this court may affirm the court's conclusions if "our de novo review demonstrates that they are supported by the record." *Larson v. Comm'r of Revenue*, 581 N.W.2d 25, 29 (Minn. 1998) (affirming decision even though tax court cited the wrong statute because the court analyzed the proper standard in reaching its conclusion); *see also Ress v. Abbott Nw.*

Hosp., Inc., 448 N.W.2d 519, 523 (Minn. 1989) (stating that on appeal the court "remains free to exercise its independent judgment" on questions of law). Here, the referee's order clearly analyzes whether Garvis's representation was necessary for the benefit of the estate, in accord with the appropriate statute, Minn. Stat. § 524.5-502(b). Therefore, the district court did not abuse its discretion in denying payment of Garvis's attorney fees from the conservatee's estate.

Reduction of Kopplin's attorney fees

Kopplin represented co-conservators Stone and Taylor during the Fourth Annual Account period in the dispute over the appointment of a geriatric-case manager. Appellant disputes the district court reducing Kopplin's $5,382 in attorney fees by $1,500. Appellant argues that the district court abused its discretion when it reduced Kopplin's attorney fees on the basis that they were disproportionate to the size of the estate.

An attorney who performs services for the estate at the instance of the conservator is entitled to "just and reasonable" compensation. Minn. Stat. § 525.515(a) (2006). In the absence of a prior written agreement, the court shall consider the following factors to determine whether the attorney fee is fair and reasonable: "(1) The time and labor required; (2) The experience and knowledge of the attorney; (3) The complexity and novelty of the problems involved; (4) The extent of the responsibilities assumed and the results obtained; and (5) The sufficiency of assets properly available to pay for the services." Minn. Stat. § 525.515(b) (2006). The court must consider all factors, "and the value of the estate shall not be the controlling factor." Minn. Stat. § 525.515(c) (2006).

In the order reducing Kopplin's attorney fees by $1,500, the referee reasoned:

> There was a very narrow issue involved here and not a great deal of time and labor was required to develop the case against retention of the case manager. The experience and knowledge of the attorneys is not questioned here. The problems were not complex or novel. There was no new law or terribly abstract concept here. The worst that might have happened from the perspective of the ward was that another, independent expert would have overseen her care. Successfully opposing that appointment was not a result warranting a large attorney's fee. The result obtained was not great. The estate is insufficient to pay for extended litigation over this matter.

The referee concluded that a $1,500 reduction of Mr. Kopplin's attorney fees was reasonable. The district court adopted the referee's factual findings and legal conclusions and held the reduction of Kopplin's fees "was a sound one." These findings are supported by the evidence in the record.

The district court considered all the statutory factors in section 525.515 to assess the reasonableness of Kopplin's attorney fees and did not reduce the attorney fees based solely on the size of the estate. The district court did not abuse its discretion in reducing Kopplin's attorney fees.

II

Appellant co-conservator Stone also challenges the district court's reduction of $22,293.40 in mileage fees paid by the estate to $11,388. Appellant argues that the district court erred by applying the wrong subdivision of the statute to reduce the mileage fees. The district court relied on Minn. Stat. § 524.5-417(c)(4), but this subdivision addresses the inheritance of real estate. The correct statue is Minn. Stat. § 524.5-

417(c)(1) (2006). But again, even when a district court cites the wrong statute, we will affirm the court's conclusions if "our de novo review demonstrates that they are supported by the record." *Larson*, 581 N.W.2d at 29.

Under section 524.5-417(c)(1), a conservator has the "duty to pay the reasonable charges for the support, maintenance, and education of the protected person in a manner suitable to the protected person's station in life and the value of the estate," but is not personally liable for such charges. *See Moore*, 409 N.W.2d at 16–17 (interpreting predecessor statute to Minn. Stat. § 524.5-417(c)(1) to mean that the conservator has a duty to protect the estate's assets from depletion). Further, "[w]hen the court determines that a guardian or conservator has rendered necessary services or has incurred necessary expenses for the benefit of the ward or the protected person, the court may order reimbursement or compensation to be paid from the estate of the protected person." Minn. Stat. § 524.5-502(c) (2006). In addition, this court reviews factual questions from probate proceedings for clear error. *Moore*, 409 N.W.2d at 16.

In reducing Stone's mileage fee, the referee noted that Stone's mileage fees constituted the overwhelming majority of the conservators' fees in three years. The referee found that Stone has the burden "to show that money was spent properly and to pay only reasonable debts and charges," but that Stone did not provide proof that she incurred all of the mileage fees requested. The referee concluded that the mileage fees Stone allegedly incurred were "not a reasonable charge against the estate of the protected person," and reduced the fees to a reasonable amount of $3,796 per accounting period. The district court adopted the referee's factual findings and conclusions and found the

reduction of appellant's "extraordinary mileage fees" appropriate. These findings are supported by the record.

The district court's decision to reduce appellant's mileage fees is consistent with the statutory framework in Minn. Stat. §§ 524.5-417(c)(1) and 524.5-502(c). The district court analyzed whether appellant's mileage fees were reasonable and found the mileage fees to be exorbitant based on their overall amount, the services rendered, and the lack of documentation to support the expenses. The district court did not abuse its discretion in reducing the amount of Stone's mileage fees paid by the estate.

Affirmed.

Dated: Dec. 20, 2007

Natalie E. Hudson

Judge Natalie E. Hudson