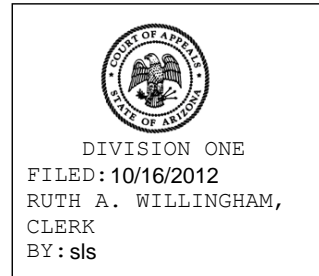


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**



In the Matter of the Limited)	1 CA-CV 11-0634
Conservatorship for:)	
)	
MARY FRANCES D'AMBROSIO,)	DEPARTMENT B
)	
)	MEMORANDUM DECISION
A Protected Person.)	(Not for Publication -
)	Rule 28, Arizona Rules
<hr/>)	of Civil Appellate
MARY D'AMBROSIO,)	Procedure)
)	
Plaintiff/Appellant,)	
)	
v.)	
)	
MARICOPA COUNTY PUBLIC FIDUCIARY,)	
)	
Defendant/Appellee.)	
)	

Appeal from the Superior Court in Maricopa County
Cause Nos. CV2009-025793; PB2008-002215 (Consolidated)
The Honorable Rodrick J. Coffey, Commissioner

AFFIRMED

Mary D'Ambrosio	Phoenix
Plaintiff/Appellant Pro Se	
William G. Montgomery, Maricopa County Attorney	Phoenix
Roberto Pulver, Deputy County Attorney	
Defendant/Appellee	

H O W E, Judge

¶1 Mary Frances D'Ambrosio ("Appellant") appeals from the trial court's order discharging her court-appointed limited conservator, the Maricopa County Public Fiduciary ("MCPF"), in a probate matter.

FACTS AND PROCEDURAL HISTORY

¶2 In October 2008, the trial court appointed MCPF as Appellant's limited conservator. The purpose of the conservatorship was to investigate, recover, and expend assets and funds to protect Appellant's interest in the house she grew up in and inherited from her Mother's estate.

¶3 Over the next three years, Appellant wrote numerous letters to the probate court objecting to MCPF's discharge and raising allegations of misconduct against MCPF. The court forwarded these letters to the parties because it could not read the handwriting or determine the nature of Appellant's grievances or "the relief, if any, [she] requested."

¶4 In January 2009, MCPF moved for discharge of the limited conservatorship because Appellant had refused to cooperate with the filing of probate. MCPF was also concerned that "there [wa]s a lack of financial resources available to assist [Appellant]" in paying the outstanding tax liens against her house. Appellant, through her court-appointed counsel, objected to MCPF's motion for discharge and asked that MCPF remain as her limited conservator.

¶15 In January 2009, Appellant wrote two letters to the court. In the first letter, Appellant denied that she refused to cooperate with MCPF. In the second letter, Appellant argued that MCPF had promised to pay the property taxes on the house. Appellant considered this a "contract breach, act of bad faith, fraud, and lack of accountability." She argued that she was a statutorily "protected person" and that discharging MCPF would be "unconscionable" because it would leave her without help. The court denied MCPF's motion for discharge.

¶16 In April 2009, MCPF renewed its motion for discharge, arguing that it had "not received the cooperation it need[ed]" from Appellant. Because Appellant assured the court that she would assist MCPF in a new probate action, the court denied MCPF's motion. The court closed that case and ordered MCPF to file a new formal probate petition. The court told Appellant that "failure to assist [MCPF] with the facilitation of probating [her mother]'s Will may result in the discharge of the [MCPF] as Limited Conservator."

¶17 One month later, MCPF again moved for discharge of the conservatorship because Appellant would not provide the necessary information to administer probate, including handing over her mother's original will. Appellant objected and alleged that (1) MCPF had made illegal demands for her mother's original will; (2) its demands for an inventory invaded her privacy and violated her

rights as a mentally ill and disabled person; and (3) it had "endangered" her inheritance by requesting discharge instead of fulfilling its promise to pay her outstanding property taxes.

¶18 Appellant subsequently wrote letters to the court in July 2009 stating that it was "unconscionable" for MCPF to seek discharge more than a year after it promised to help protect her property and requesting \$3,400 (the amount of her property taxes) in sanctions against MCPF because its employee had allegedly breached his fiduciary and contractual duties to her. Appellant also asked the court to waive her property taxes because of the misconduct.

¶19 On August 2, 2009, Appellant wrote a letter complaining that MCPF's employees had refused to protect her. She said that she needed help because she was on a fixed income and was now sixty-years-old with numerous health and emotional problems. She also accused MCPF of ex parte communications because it failed to notify her of a continued hearing.

¶10 On August 11, 2009, Appellant filed a handwritten civil complaint pro se, Maricopa County Case No. CV2009-025793. She raised numerous contract and tort claims, including breach of contract, endangering property, mental and emotional distress, fraud, exploitation and victimization of the disabled. As damages, Appellant sought waiver of her property taxes and unspecified "punitive action" against MCPF.

¶11 At a hearing on October 27, 2009, the court accepted MCPF's new formal probate petition, which contained a request to waive statutory requirements of formal probate, including an accounting and inventory of the property, adjudication of testacy, determination of heirs and appointment of a personal representative. The court denied MCPF's request to waive the statutory requirements.

¶12 On November 17, 2009, a guardian ad litem ("GAL") was assigned to Appellant to help the court determine whether Appellant needed a permanent guardian or conservator to protect her best interests. The GAL reported that Appellant repeatedly refused to answer the door when she came to the house and that she believed from speaking with others that Appellant may have a mental illness but "is not incapacitated," so she would not meet the requirements for a guardian or conservator.

¶13 On November 20, 2009, the trial court granted MCPF's motion to dismiss Appellant's civil complaint without prejudice because Appellant had failed to file a timely notice of claim. Appellant did not appeal from that order.

¶14 On December 8, 2009, the court issued a comprehensive minute entry ruling summarizing the procedural history of the probate case. It noted that the limited-conservatorship order had authorized MCPF to do all that was necessary to protect Appellant's property interest, including entering the house by

legal means without her consent. The court ordered MCPF to "immediately take whatever actions are necessary to protect the interests of [Appellant] in the real property and personal property located therein in accordance with" that order.

¶15 On June 29, 2011, Appellant wrote to the court requesting \$25,000 in sanctions against MCPF, accusing MCPF of abusing its power, wasting time, and causing her "extreme mental distress" during the preceding three years. MCPF responded that it would file another formal probate petition, but that Appellant must "release the original Will for filing with this Court" and that her cooperation is "absolutely necessary."

¶16 In July 2011, MCPF again moved to terminate the limited conservatorship and for discharge because a limited conservatorship was not necessary; title was still in Appellant's mother's name, and Appellant still lived in the house. The court subsequently terminated the limited conservatorship and discharged MCPF. It denied Appellant's request for sanctions and granted her court-appointed counsel's motion to withdraw.

¶17 Appellant timely appeals from the "judgment entered on August 3, 2011 in favor of [MCPF]."

DISCUSSION

¶18 As an initial matter, MCPF has elected not to file an answering brief and moved to dismiss the appeal because Appellant (1) failed to articulate a cognizable claim, (2) failed to

properly serve the opening brief under ARCAP 4,¹ and (3) failed to comply with the form and size requirements of ARCAP 14(a). Appellant argues that MCPF's decision not to file an answering brief "enters it into default" and moves for summary judgment, requesting "\$50,000 in damages plus per annum interest" and additional punitive damages and sanctions, "as the court deems appropriate." She also seeks monetary sanctions against MCPF for failing to file an answering brief and for breach of fiduciary duties.

¶19 Although this Court may dispose of an appeal for failure to comply with the Arizona Rules of Civil Appellate Procedure, we decline to do so in this case. See *Lederman v. Phelps Dodge Corp.*, 19 Ariz. App. 107, 108, 505 P.2d 275, 276 (1973) (refusing to dismiss appeal for failure to comply with requirements of opening brief and addressing the merits); *Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966) (same). We therefore deny all motions and requests for sanctions on appeal and review the merits of this case.²

¶20 In her opening brief, Appellant appears to raise contract and tort claims, including breach of "fiduciary duty,"

¹ MCPF incorrectly referred to Appellant's improper service of the "answering" brief.

² Appellant moves to strike any further "pleadings/letters/motions" from MCPF in this appeal. Because MCPF has not filed any further "pleadings/letters/motions," Appellant's motion to strike is moot.

breach of contract, "endangerment of property" and infliction of emotional distress, as well as violations of civil rights and the rights of a disabled person under "federal and state" laws. Appellant brought these claims against MCPF in her civil complaint that was dismissed on November 20, 2009. Because Appellant has not appealed from that ruling, this Court lacks jurisdiction to address those claims in this appeal. See *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997) (noting this Court's "independent duty to determine whether it has jurisdiction to consider an appeal").

¶21 Appellant further contends that MCPF has mistreated and wronged her by repeatedly seeking discharge from the limited conservatorship without fulfilling its promises to pay the property taxes on the house and to transfer title to her name. She argues that her permanent disability and poverty made MCPF's conduct especially harmful. Although Appellant's condition is indeed sympathetic, she has not identified a cognizable assignment of error for this Court's review.

¶22 Reading Appellant's brief generously as a challenge of the probate court's "August 3, 2011" order that terminated the limited conservatorship and discharged MCPF, however, we also find no error. The superior court "has wide latitude to perform its statutory duty to safeguard the well-being of the ward." *In*

re Guardianship of Kelly, 184 Ariz. 514, 518, 910 P.2d 665, 669 (App. 1996). We therefore review the establishment of a conservatorship for abuse of discretion. See *id.* "Generally, a court abuses its discretion where the record fails to provide substantial support for its decision or the court commits an error of law in reaching the decision." *Files v. Bernal*, 200 Ariz. 64, 65, ¶ 2, 22 P.3d 57, 58 (App. 2001).

¶23 The record reveals no abuse of discretion. Substantial evidence shows that Appellant refused to cooperate with MCPF in facilitating probate by refusing to provide her mother's original will and to comply with the statutory requirements of an accounting and inventory of the house. See Ariz. Rev. Stat. § 14-3706(A) (Westlaw 2012)³ (requiring a detailed inventory of probate property). Since MCPF's appointment as limited conservator in October 2008, it was unable to file several probate petitions because Appellant would not cooperate. In April 2009, the court advised Appellant that "failure to assist [MCPF] with the facilitation of probating [her mother's] Will may result in discharge of [MCPF] as Limited Conservator." Frustrated by Appellant's refusal to assist with the requirements of probate, MCPF unsuccessfully requested a waiver of those requirements in October 2009. For over three years, the court

³ We cite to the current version of applicable statutes where no material revisions have occurred.

denied MCPF's motions for discharge so that MCPF could complete probate. During that time, Appellant refused to cooperate with the process of probating her mother's estate. Under these circumstances, the probate court did not err in terminating the limited conservatorship and discharging MCPF.

CONCLUSION

¶24 We affirm the probate court's order terminating the limited conservatorship and discharging MCPF as limited conservator.

_____/s/_____
RANDALL HOWE, Judge

CONCURRING:

_____/s/_____
MAURICE PORTLEY, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge