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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001096-MR

JUSTIN BRYANT

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 07-CI-012434

HON. CLAUDE R. PRATHER AND
GUARDIACARE SERVICES, INC.

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: ACREE, STUMBO AND WINE, JUDGES.

ACREE, JUDGE: Justin Bryant appeals an order and opinion of the Jefferson Circuit Court denying a writ of prohibition against Judge Claude R. Prather of the Jefferson District Court. Justin sought the writ to prohibit Judge Prather's

enforcement of two orders requiring him to pay restitution to his mother's guardianship account.

Bruce and Paula Bryant were in a motorcycle accident on November 21, 2004. Bruce was killed, and Paula suffered a brain injury which rendered her unable to manage her own affairs. Justin, Bruce's and Paula's son, was named administrator of Bruce's estate and Paula's guardian. In these capacities Justin recovered insurance proceeds of more than \$400,000; however, he deposited the funds – which he had accumulated on behalf of both his parents separately – into one account in the name of the Estate of Paula J. Bryant. Justin used the money for a variety of purposes, all of which he claims were to his mother's benefit. One such expenditure was a payment for the legal fees of Charles Friedman. Justin and Friedman have asserted that Friedman performed services entirely for Paula's benefit, but this is disputed.

The district court ordered Justin to provide a full accounting of the expenditures he made from his mother's account. The Jefferson County Attorney and Paula's Guardian *ad litem* objected to several of these expenditures, and Justin was removed as his mother's guardian and as administrator of his father's estate. The district court also ordered Justin to provide a final accounting and appointed GuardiaCare to serve as Paula's guardian.

Justin filed a final accounting on May 31, 2006, but the County Attorney and GuardiaCare objected that there were several expenditures which

Justin did not adequately demonstrate to be for Paula's benefit. The expenditure for Friedman's legal services was among those contested.

On December 15, 2006, after a series of hearings, orders for a more complete accounting, and motions to hold Justin in contempt, the district court ordered Justin to repay \$58,152.19 to Paula's guardianship account. The court later held Justin in contempt for failure to comply with this order and for failure to comply with an order that he provide a complete accounting. On March 5, 2007, the court ordered Friedman to return \$25,750 in legal fees to Paula's account. Following a contempt hearing, the district court issued another order on June 11, 2007. This order required Justin to repay \$8,191.74 in restitution to Paula's account and ruled Justin and Friedman jointly and severally liable to repay the \$25,750 in restitution to Paula's account previously ordered.

Justin and Friedman appealed the district court's orders to the circuit court, but the appeal was dismissed for lack of standing. Justin then petitioned the Jefferson Circuit Court for a writ prohibiting District Judge Prather from enforcing his orders of December 15, 2006, and June 11, 2007. Friedman petitioned the circuit court to prohibit the district judge from enforcing the orders of March 5, 2007, and June 11, 2007. On appeal, the petitioners argued Judge Prather exceeded the jurisdiction of the district court in ordering them to pay restitution. The circuit court denied the petition because "Judge Prather's orders of December 15, 2006 and March 5, 2007, were valid exercises of both his contempt powers and powers under Kentucky Revised Statute (KRS) 387.520." The opinion does not

address the propriety of the June 11, 2007 order. Justin's appeal to this Court followed.

At the outset, we are compelled to note that Appellant's brief does not direct the Court's attention to the portions of the record which support his version of the events he deems significant to this case; nor does his brief cite to portions of the record which indicate he preserved his arguments before the circuit court. Both are violations of Kentucky Rule of Civil Procedure (CR) 76.12 (4)(c) and subject him to the sanction of striking the brief. However, in accordance with *Elwell v. Stone*, 799 S.W.2d 46 (Ky.App. 1990) this Court routinely declines to impose such a severe sanction and, instead, reviews under such circumstances for manifest injustice only. *Id.* at 47. Because we find manifest injustice here, we reverse.

“A writ of prohibition is an extraordinary remedy.” *Ally Cat, LLC v. Chauvin*, 274 S.W.3d 451, 456 (Ky. 2009). It may be granted in two instances: when a court is acting beyond its jurisdiction and the party has no adequate remedy via appeal or when “the lower court is about to act incorrectly, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise, and great injustice or irreparable injury will result.” *Id.* at 457, quoting *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky.2004). Judge Prather asserts the circuit court was correct in ruling the district court acted within the jurisdiction conferred by KRS 387.520 and pursuant to its powers of contempt. Justin argues on appeal that the district court exceeded its jurisdiction in ordering him to pay restitution to his mother's guardianship account. We agree with Justin.

KRS 387.520(1) provides, “[t]he District Courts shall have exclusive jurisdiction over all proceedings involving a determination of partial disability or disability, the modification of orders, the appointment and removal of guardians and conservators, and the management and settlement of their accounts.”

However, *Lee v. Porter*, 598 S.W.2d 465 (Ky.App. 1980) clarifies that KRS 24A.120(1) vests jurisdiction over guardianship matters in the circuit court “in those situations where mismanagement, fraud, deception or other causes which required proceedings adversary in nature[.]” *Id.* at 467.

Judge Prather argues the district court had jurisdiction to order Justin to return certain funds to the guardianship account, because KRS 387.520(1) grants district courts exclusive jurisdiction over “the management and settlement” of a ward’s accounts, and because KRS 387.670(2) enables a district judge to “take whatever action it considers necessary to enhance the well-being of the ward” upon review of the guardian’s annual report. According to this analysis, the district judge’s power to protect the ward gave him the ability to order a former guardian to pay restitution. While ordering restitution may have resulted from Judge Prather’s attempt to account for everything in Paula’s estate and manage it properly, the statutes do not authorize the judge the broad scope of discretion assumed here under the statute for the protection of the ward. The decision in *Lee* makes it clear that a district court’s “exclusive jurisdiction” ends when issues of mismanagement arise, meaning a district court may not conduct proceedings or award remedies against a guardian for mismanagement. *Lee*, 598 S.W.2d at 467.

We read the charge of KRS 387.679 to “take whatever action (the court) considers necessary” to authorize a fair amount of discretion, but certainly not exceeding the district court’s jurisdictional confines as established in *Lee*.

Judge Prather next argues that, because there was no official charge of mismanagement of Paula’s funds, the rule articulated in *Lee* does not apply, and jurisdiction remained with the district court. Justin asserts the proceedings before the district court were, in fact, charges of mismanagement of funds, and that jurisdiction therefore lay with the circuit court.

Again, we agree with Justin. First, the equitable remedy of restitution, which Justin was ordered to pay, is one typical remedy for the mismanagement of funds, especially applicable, as here, when the guardian is alleged to have used funds of the ward to satisfy his own financial obligations.¹ However, “district courts are prohibited from entertaining ‘matters of equity.’” *Kelley v. Nationwide Auto Restoration, LLC*, 246 S.W.3d 470, 473 (Ky.App. 2007); KRS 24A.120 (“District Court shall have exclusive jurisdiction in . . . Civil cases in which the amount in controversy does not exceed four thousand dollars (\$4,000), exclusive of interest and costs, *except . . . matters of equity*”; emphasis supplied). So, in

¹ See *Kentucky Hosp. Ass’n Trust v. Chicago Ins. Co.*, 978 S.W.2d 754, 755 (Ky.App. 1998) in which this Court said:

In equity, a court may give restitution to a plaintiff to prevent the unjust enrichment of the defendant where the plaintiff has used its property in discharging an obligation. The doctrine of subrogation includes every instance in which one person not acting voluntarily, has paid a debt for which another was primarily liable and which in equity and good conscience should have been discharged by the latter. [citations omitted].

ordering Justin to pay restitution without the formal commencement of mismanagement proceedings, Judge Prather effected an equitable remedy for mismanagement without giving Justin the procedural and jurisdictional protections of a trial before the circuit court. Judge Prather acted outside the district court's jurisdiction in doing so.

Furthermore, the proceedings were clearly adversarial in nature. The orders now at issue represent the culmination of several months of the Jefferson County Attorney and GuardiaCare's pursuit of Justin – via evidentiary hearings, motions for contempt, and oral arguments at which both parties were present and advocating opposing positions – to recover funds for Paula's guardianship account. This is precisely the type of controversy intended by the legislature to be resolved in the circuit court pursuant to its jurisdiction.

The circuit court's order and the Commonwealth's brief also assert that the district court's orders were permissible because they were issued pursuant to the district court's powers of contempt. However, this position mischaracterizes the judge's orders.² From what we can ascertain from the record, it appears the

² The record before us consists almost entirely of the record before the Jefferson Circuit Court. The only orders from the district court are the order of December 15, 2006, and June 11, 2007, ordering Justin to repay certain amounts to Paula's guardianship account. There is no order holding Justin in contempt, and only a brief reference to a finding of contempt in the Circuit Court's order denying the writ of prohibition. If the district court issued a contempt order, it is not now before us.

While the brief submitted by the Attorney General on behalf of Judge Prather does refer to a series of audio discs from the district court proceedings, these references, with one exception, do not direct us to a specific time stamp on those discs. This makes it difficult to locate the portion of the proceedings which he alleges support the judge's version of the course of events before the district court. We are not compelled to listen to any disc in its entirety to locate proceedings which may support the appellee's position. At any rate, none of these references appear to direct our attention to any orders of contempt, written or verbal, issued by

district judge held Justin in contempt for violating an order that he provide a complete final accounting; any accompanying sanctions or terms of Justin's contempt are unclear from the record. However, the orders Justin requests the district court be prohibited from enforcing are apparently not contempt sanctions – they simply order restitution without explaining why. There is no indication from the language of the orders that they have anything to do with contempt. Violating those orders may lead to a charge of contempt, but the orders in themselves do not place Justin in contempt, nor were they issued as the result of contempt proceedings. It appears the orders at issue were not the result of the district court's exercise of its contempt powers.

The first element for granting a writ of prohibition has been demonstrated. By ordering Justin to pay restitution, the district court was acting outside its jurisdiction. This constitutes manifest injustice.

The second element for granting a writ of prohibition is a demonstration that the petitioner has no available remedy through an application to an intermediate court. *Ally Cat, LLC*, 274 S.W.3d at 457. Justin has already been denied review of the district court order by the circuit court. The circuit court denied his appeal because he lacked standing. This leaves Justin without any means to contest the district court's orders affecting him. The second requirement has therefore been met. The circuit court should have issued a writ of prohibition under these circumstances.

Judge Prather.

Because the district court exceeded its jurisdiction and because Justin has no recourse on direct appeal, we reverse the Jefferson Circuit Court's order denying Justin's petition for writ of prohibition and remand for entry of an order consistent with this opinion.

ALL CONCUR.

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