

STATE OF MICHIGAN
COURT OF APPEALS

ROSE KONECNY, Personal Representative of the
ESTATE OF CHARLES HEMMINGER, and
LAWRENCE W. NEWMAYER,

UNPUBLISHED
February 26, 2002

Plaintiffs-Appellants,

v

JUDITH ZOCK and KEVIN CRONIN,

No. 224630
Allegan Probate Court
LC No. 90-046014-CG

Defendants-Appellees.

Before: Griffin, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's award of attorney fees and costs as sanctions for what it found to be a frivolous challenge to the former guardian/conservator's accounting. We affirm.

We review an award of sanctions for abuse of discretion. *Phinney v Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997); *Auto Club Ins Ass'n v State Farm Ins Cos*, 221 Mich App 154, 167; 561 NW2d 445 (1997). An abuse of discretion in a trial court's decision to award attorney fees is found only "where an unprejudiced person, considering the facts upon which the trial court acted, would say that there was no justification or excuse for the ruling," *Auto Club, supra*, or if "the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion," *Schoensee v Bennett*, 228 Mich App 305, 314-315; 577 NW2d 915 (1998).

Plaintiffs argue that the trial court erred in granting defendants actual costs and attorney fees. Having reviewed the record, we cannot say that the trial court abused its discretion. It certainly did not abuse its discretion in finding no merit in plaintiffs' objections to payment to the former guardian/conservator on the grounds that her time entries were not sufficiently itemized or that the accounting was late. None of the statutes or cases cited by plaintiffs actually imposes such a requirement. The only specific statutory requirement with respect to a final account under former MCL 700.576¹ was simply the requirement that such an account be made. In the absence of specific statutory or case law authority for doing so, we cannot say that the

¹ Repealed by 1998 PA 386, § 8102, effective April 1, 2000, but in effect at the time of the guardian/conservatorship at issue in this case.

draconian remedy of disallowing her fees would be appropriate where the accounting is tardy. Nor did the trial court abuse its discretion in finding a lack of reasonable factual basis to plaintiffs' claims (1) that approximately \$24,000 was missing from the ward's trust account at the end of the guardian/conservatorship, which plaintiffs admit simply was not true and shown not to be true by bank statements; (2) that the guardian/conservator acted against her ward's interests in raising safety concerns about his use of a riding lawn mower, concerns his physician found to be legitimate in light of his partial paralysis and poor sense of balance; and (3) that she engaged in a "vendetta" against his residential care facility in requesting that it be investigated, a claim that is negated by the investigator. The investigator stated that he told the former guardian/conservator simply to share her concerns with him, and to rely upon him to determine whether they constituted violations. He thought that when dealing with the health and safety of incapacitated persons – including the ward here, as to whom the investigator himself had ongoing concerns that special attention was warranted – it is "better to be safe than sorry" in determining whether potentially serious problems exist. In finding that plaintiffs' objections on these grounds were not well-grounded in fact, and therefore violated MCR 2.114(D)(2), the predicate for the award of sanctions, the trial court did not abuse its discretion.

Nor did the trial court abuse its discretion in finding that plaintiffs filed the objections to the former guardian/conservator's accounting in violation of MCR 2.114(D)(3) for the improper purpose of harassing the former guardian/conservator. The evidence suggested that the former guardian/conservator had upset the intermingled financial interests of the residential care facility's manager and plaintiff Lawrence W. Newmeyer's wife, who shared fees for providing to the ward "therapy" involving the challenged use of a riding lawn mower. Apart from the relationship, there was evidence that plaintiff Newmeyer was directly involved in attempting to secure payment of his wife's fees, and there was considerable evidence presented as to the nature of the financial loss to plaintiff Newmeyer's wife, the animosity that was generated because of it, and what at the very least was the appearance of impropriety on the part of plaintiff Newmeyer's wife in the way the "therapy" was advocated to the detriment of the ward's interests in order to secure lucrative payments to herself. Plaintiff Newmeyer asserted strenuously, both at trial and on appeal, that such conclusions are unfounded, and offered personal assurances that he would never do anything unethical. What he says may be correct, but there was evidence upon which the trial court could reasonably base its conclusions, and it did not abuse its discretion in making them.

Plaintiffs also contend that the trial court erred in ruling that the former guardian/conservator's time spent in defending her accounting was legitimate work for the ward's estate. Even if this were so, we note that the trial court must assign sanctions to compensate the former guardian/conservator where plaintiffs' make a frivolous claim. MCR 2.114(F); MCR 2.625; MCL 600.2591. Here, the trial court stated that "[i]n my years on the bench this has been one of the most flagrant abuse of ward's estate for the personal issues of the successor guardian/conservator who authorized her attorney to pursue such groundless actions." We find no error requiring reversal where although the trial court may have misconstrued the work at issue as being done on behalf of the estate, it properly awarded the amount to be paid by the individual plaintiffs as sanctions for plaintiffs' pursuit of frivolous claims.

Plaintiffs also argue, in essence, that defendant Zock ought to have been sanctioned for submitting a late accounting without a detailed itemized accounting of her time. Plaintiffs'

arguments are essentially a rehash of the argument that the trial court ought not to have approved Zock's accounting. Given that we have already explained that the trial court did not abuse its discretion in finding plaintiffs' arguments to this effect to have been so frivolous as to merit the award of sanctions, it goes without saying that we do not find them to be a basis for reversing the trial court's decision. The trial court did not abuse its discretion in declining to award sanctions against the guardian/conservator, given that there was ample evidence to support its findings that she did nothing even to merit her not being paid her full fees, let alone egregious enough to justify her being sanctioned.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra