STATE OF MINNESOTA
IN COURT OF APPEALS
A11-499

In the Matter of the Guardianship and Conservatorship of:
William D. Hohenauer, Ward.

Filed December 12, 2011
Affirmed
Worke, Judge

Aitkin County District Court
File No. 01-P9-03-000584

Thomas C. Pearson, Gammello, Qualley, Pearson & Mallak, PLLC, Baxter, Minnesota (for appellants Paul Peterson and H. Frances Peterson)

Erik A. Christensen, Aitkin, Minnesota (for respondent William D. Hohenauer)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Schellhas, Judge.

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

WORKE, Judge

Appellants served as guardians and conservators of the ward. Appellants challenged the district court's disallowance of certain fees as unnecessary and unreasonable. We reversed and remanded with instructions to the district court to allow appellants to challenge the policies that the district court relied on in determining the reasonableness of appellants' fees and, in its discretion, to reopen the record. Following remand, appellants now argue that the district court ignored evidence and abused its

discretion in disallowing certain expenses and fees and in requiring appellants to repay those amounts. We affirm.

FACTS

In August 2003, appellants Paul Peterson and H. Frances Peterson petitioned for appointment of guardians of William Dennis Hohenauer and conservators of Hohenauer's estate. In November 2003, the district court appointed appellants guardians of Hohenauer and conservators of Hohenauer's estate after finding that Hohenauer was incapacitated due to a diagnosis of paranoid schizophrenia, was under commitment, displayed psychotic symptoms, refused medical treatment, and lacked insight into his mental illness and medical needs. In August 2006, appellants' appointment was terminated.[1]

In April 2008, the district court ordered appellants to show cause as to why fees charged to the estate were not excessive. Following a hearing, the district court, relying on Aitkin County Health and Human Services Service Fee Policy for Guardians and Conservators (policy) and the Minnesota Association for Guardianship and Conservatorship Standards of Practice (standards), determined that several of appellants' charges—their hourly rate and $250 monthly base fee—were excessive, unnecessary, and unreasonable, although the court found that it was difficult to determine which expenses were necessary because appellants' billings were "extremely disorganized and inaccurate."

[1] Hohenauer was restored to capacity in December 2006. Hohenauer passed away on June 17, 2010.

Appellants challenged the district court's order disallowing certain fees, and we reversed and remanded with instructions to the district court to allow appellants an opportunity to challenge the persuasiveness of the policy and standards, and, in its discretion, to reopen the record. *See In re Guardianship and Conservatorship of Hohenauer*, No. A09-448, 2010 WL 346377, at *5 (Minn. App. Feb. 2, 2010). We further instructed the district court to apply a five-factor guide in determining just-and-reasonable fees. *See id.* at *5-6; *see also In re Guardianship of Doyle*, 778 N.W.2d 342, 351 (Minn. App. 2010) (setting out five-factor guide).

The district court held a hearing, but neither the policy nor the standards were admitted into the record, and the district court declined to take judicial notice of the policy and standards, finding neither to be "particularly helpful or overly persuasive." In its original order the district court, relying on the policy, determined that appellants could not charge more than $35 per hour. But on remand, the district court determined that the policy was merely persuasive and not binding. After applying the just-and-reasonable test on remand, the district court concluded that appellants' reasonable hourly rate was $35 until December 2004, at which point appellants' time and labor demands diminished thereby reducing their reasonable hourly rate to $25. The district court further disallowed the $250 monthly flat fee that appellants charged for 13 months for recurring tasks. The district court concluded that this fee was unreasonable, excessive, and unnecessary because appellants billed a flat fee in addition to an hourly rate for the same tasks. Further, the district court concluded that it was unable to determine whether the recurring tasks were actually performed or to what extent they were required because appellants'

billings were disorganized, irregular, and flawed. The district court concluded that appellants must repay the estate $15,000.[2] This appeal followed.

D E C I S I O N

Appellants argue that the district court's findings and conclusions are not supported by the evidence and that the district court abused its discretion in disallowing certain expenses. The district court's findings will not be disturbed unless this court, after reviewing the evidence, "is left with the definite and firm conviction that a mistake has been committed." *In re Estate of Congdon*, 309 N.W.2d 261, 266 n.7 (Minn. 1981) (quotation omitted). A district court's decision as to the reasonable value of a conservator's or guardian's services is a question of fact that will not be set aside unless clearly erroneous. *In re Conservatorship of Mansur*, 367 N.W.2d 550, 552 (Minn. App. 1985), *review denied* (Minn. July 11, 1985).

The district court applied the five-factor guide to determine whether appellants' fees were just and reasonable, considering: (1) the time and labor required; (2) appellants' experience and knowledge; (3) the complexity and novelty of problems involved; (4) the extent of the responsibilities assumed and the results obtained; and (5) the sufficiency of assets available to pay for the services. *See Doyle*, 778 N.W.2d at 351.

Time and labor

Appellants argue that this matter was time- and labor-intensive, claiming that the case "was deemed by Aitkin County Social Services to be the most difficult case in

[2] $3,250 ($250 monthly fee charged for 13 months) + $11,750 (excessive, unreasonable, and unnecessary billings) = $15,000.

Aitkin County because of Mr. Hohenauer's unique blend of mental illness, his assets and [] violent behavior, . . . he did not want conservator or guardian control of his estate, [] he hid assets and [] failed to cooperate." The district court found that, initially, appellants expended significant time and labor, but that time and labor demands diminished around December 2004.

The record reflects that appellants expended significant time and attention at the beginning of their appointment in order to familiarize themselves with Hohenauer's finances and medical condition. Hohenauer was diagnosed with paranoid schizophrenia. Hohenauer also had significant assets that were hidden, and he resisted the discovery of his assets, requiring appellants to spend a significant amount of time and labor in working to discover Hohenauer's financial state. But after December 2004, appellants mainly billed for preparing to go to court, talking to people, travelling, and visiting Hohenauer. The record supports the district court's finding that this matter was time- and labor-intensive only until December 2004.

Experience and knowledge

Appellants argue that they have extensive accounting backgrounds and educational experience. The district court found that appellants

> failed to demonstrate any experience that was germane to their roles as guardians/conservators. All of the experience they cite is illusory at best because it does not contain any information which would allow this [c]ourt to weigh its value. The [c]ourt cannot determine anything from their averments other than they worked somewhere, doing something for a period of years and received or did not receive certain degrees.

> Without more specific information regarding their experiences, the [c]ourt cannot find that there is any value to their 'experience' or 'knowledge.'
>
> Accordingly, the [c]ourt finds that with respect to the second factor of the 'just and reasonable test' [appellants] have no experience or knowledge which is germane to their role as guardians/conservators.

The district court based this determination on appellants' submission on remand that sought to demonstrate their experience and knowledge. Appellants both claimed: (1) three years as "manager" of "National Tax Firm's Accounting Office"; (2) nine years as "owner of a tax accounting office"; and (3) nine years "doing farm accounting." H. Frances Peterson also claimed to have spent five years as a "purchasing agent" for a window manufacturer and claimed to have two years of college education. Paul Peterson claimed to have twelve years of "tax reduction analysis and income enhancement experience"; training and experience in life insurance, long-term health care, and "asset conservation/preservation"; three college degrees; and law-school experience.

We agree with the district court that appellants provided only vague descriptions of their prior experiences and have failed to explain how their experiences are relevant to serving as guardians/conservators. First, it is questionable that appellants held the same titles for three different positions for the same number of years. Appellants also failed to describe the duties they performed at these tax offices, whether they performed accounting duties, and how their positions related to work performed as guardians/conservators. Further, appellants failed to show the relevance of working as a purchasing agent of a window manufacturer to the duties of a guardian/conservator. Additionally, H. Frances Peterson failed to describe the classes she took during her two

years of college. And Paul Peterson failed to define what "tax reduction analysis and income enhancement experience" means or how he gained that experience. He also failed to provide any details regarding his training and experience in life insurance, long-term health care, and asset conservation/preservation. Finally, Paul Peterson claimed to have three college degrees—an Associate of Arts degree in science, a Bachelor of Arts in history, and a Bachelor of Science degree in secondary education. Appellants assert that these degrees are relevant to the matter because they broadened Paul Peterson's perspective, helped him deal with people, and helped him understand people and situations. But, as the district court found, these general averments are not specific to the role of a guardian/conservator.

Moreover, at an earlier hearing in 2008, before the first appeal, H. Frances Peterson testified that she had never done any other guardian/conservatorship. Paul Peterson testified that he had little experience as a guardian/conservator. Thus, appellants admitted that they did not have a breadth of experience or knowledge relevant to guardian/conservatorship matters. The district court's finding is supported by the evidence; the record simply does not establish that appellants had even moderate levels of experience or knowledge to appropriately handle this matter.

Complexity and novelty

Appellants argue that the matter was complex because Hohenauer was diagnosed as a paranoid schizophrenic and he threatened appellants. The district court determined that Hohenauer was a diagnosed paranoid schizophrenic, had fits of anger, and made threats against appellants. The court also determined that Hohenauer had significant

assets that were hidden and difficult to discover, he resisted discovery of his assets, did not want a guardianship/conservatorship, and he believed that appellants were stealing from him. The district court determined that because the relationship was acrimonious, appellants' tasks were difficult and complex at the beginning of their appointment, but later became mundane and less complex.

Appellants' billings show that after the initial difficult period, the majority of their tasks included visiting Hohenauer, talking to people, and preparing and attending court hearings in which Hohenauer attempted to remove appellants and be determined to have regained capacity. The record supports the district court's finding that, initially, this matter was complex and novel, but later became "mundane."

Responsibilities assumed and results obtained

The district court determined that appellants "assumed responsibilities commensurate with the duties . . . of guardians/conservators." The court expressed significant concern about appellants' investment strategies, which negatively impacted Hohenauer, leading the district court to conclude that appellants did not reach positive results.

Appellants converted several certificates of deposit into three annuities that had a penalty for early withdrawal. The district court determined that the conversion made little sense, because the annuities transformed significant liquid assets into a "much less liquid form with penalties for early termination." Further, the record supports the district court's determination that there was no evidence that Hohenauer was in need of appellants' help regarding investments or that their strategy benefitted Hohenauer. Paul

Peterson testified that he transferred Hohenauer's CDs to annuities because that provided him with protection against liability. But there was no evidence that Hohenauer needed protection against liability and there was no evidence that the annuities would insulate Hohenauer from liability. Further, Paul Peterson did not "shop the annuity rates"; instead, he purchased them through an acquaintance. The record supports the district court's finding that the investment strategy was not in Hohenauer's best interests because it contravened his wishes and his pattern of investment. Further, by transferring money from a safe, interest-garnering investment to annuities with sales commissions, appellants reduced Hohenauer's assets.

Sufficiency of available assets

The district court determined that Hohenauer possessed sufficient assets to pay for appellants' services. The record supports this determination.

Based on the district court's consideration of the just-and-reasonable test, the court determined that appellants' reasonable hourly rate was initially $35, but reduced to $25 after December 2004. Appellants argue that the district court was required to adopt the $35-per-hour rate based on the remand instructions from this court. But that is an incorrect reading of this court's opinion. This court instructed the district court to, in its discretion, reopen the record. This court did not instruct the district court to use the $35-per-hour rate; rather, we instructed the court to analyze the matter using the five-factor guide, which it did. When the court conducted the analysis, it determined that appellants' appropriate hourly rate should be reduced after an initial difficult period. This determination was within the court's discretion based on: (1) this matter demanding less

time and labor requirements; (2) appellants having essentially no experience or knowledge germane to guardians/conservators; (3) the complexity and novelty of this matter diminishing after a period of time; and (4) appellants assuming responsibilities of guardians/conservators, but obtaining unsatisfactory results.

The district court further concluded that the monthly fee of $250 charged for 13 months was unreasonable, excessive, and unnecessary because appellants charged a monthly flat fee for recurring tasks and billed an hourly fee for the same tasks—essentially double billing. Additionally, the district court concluded that, based on the disorganized and irregular nature of appellants' billings, it could not determine whether the recurring tasks were actually performed or required.

The district court concluded that appellants billed excessive fees and that appellants must repay $15,000 to the estate. This conclusion, supported by the record, is within the district court's discretion.

Affirmed.