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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 01/4/11  
RUTH WILLINGHAM,  
ACTING CLERK  
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IN THE MATTER OF THE ) 1 CA-CV 09-0549  
GUARDIANSHIP AND CONSERVATORSHIP )  
FOR: ) DEPARTMENT A  
)  
MICHAEL PETRAMALA, an Adult, ) **MEMORANDUM DECISION**  
)  
\_\_\_\_\_)  
MICHAEL THOMAS PETRAMALA, an )  
Adult, ) Not for Publication -  
) (Rule 28, Arizona Rules  
Petitioner/Appellant, ) of Civil Appellate Procedure)  
)  
v. )  
)  
MARICOPA COUNTY PUBLIC )  
FIDUCIARY, as Guardian and )  
Conservator of Michael T. )  
Petramala; JUDITH MORSE, )  
Guardian ad Litem for Michael T. )  
Petramala, )  
)  
Respondents/Appellees. )  
)  
\_\_\_\_\_)

Appeal from the Superior Court in Maricopa County

Cause No. PB2006-002295

The Honorable Karen L. O'Connor, Judge

**AFFIRMED IN PART; DISMISSED IN PART**

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**K E S S L E R**, Judge

¶1 Michael Thomas Petramala ("Petramala") appeals from a superior court order denying his motion for a new trial arising out of the court's denial of his petition to remove his guardian ad litem ("GAL") and approval of an accounting provided by Petramala's conservator, Maricopa County Public Fiduciary ("MCPF"). For the following reasons, we affirm the order relating to the accounting issue and dismiss the appeal relating to the GAL issue.

**FACTUAL AND PROCEDURAL HISTORY<sup>1</sup>**

¶2 In December 2002, Petramala attended a party where, according to his allegations, several people assaulted him.

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<sup>1</sup> Our earlier decisions, *In re Petramala*, 1 CA-CV 07-0285, 2008 WL 4149005 (Ariz. App. Apr. 8, 2008) (mem. decision) and *In re Petramala*, 1 CA-CV 08-0330, 2009 WL 3460742 (Ariz. App. Oct. 27, 2009) (mem. decision), detailed the superior court's appointment of a guardian and conservator for Petramala and its disposition of his petition to terminate the guardianship and conservatorship. We include those facts here as relevant to the issues in this appeal.

Petramala filed a number of lawsuits against the persons involved in the alleged assault, including the attorney who was hired to represent several of the defendants in Petramala's actions.

¶3 Petramala then started a campaign of harassment against the guests at the party, their family members, and their lawyers. This harassment included filing numerous and repeated lawsuits against these individuals and repeatedly calling and visiting them, their employers, and their families.

¶4 Petramala ignored a superior court order that he not call or harass these individuals. Ultimately, the court dismissed Petramala's lawsuits as a sanction for his behavior. Petramala then initiated new legal proceedings and continued his harassment. The court in these various proceedings ordered Petramala to pay sanctions totaling more than \$30,000. In addition, the superior court's presiding judge found Petramala to be a vexatious litigant and ordered that he could not file any more lawsuits without the presiding judge's prior approval. However, Petramala's harassment continued.

¶5 The superior court then appointed Judith A. Morse ("Morse") as Petramala's GAL and authorized Morse to file a guardianship and/or mental health petition. Morse did file a Petition for Permanent Appointment of Guardian and Conservator, asking the court to appoint MCPF to serve as Petramala's

guardian with mental health authority and as his conservator. A jury found that Morse had proven by clear and convincing evidence that Petramala was in need of a guardian and the court appointed MCPF as his guardian with mental health authority and his conservator.

¶16 Five months after the superior court appointed the guardian and conservator, Petramala petitioned the court to terminate the guardianship and conservatorship. The court held a three-day hearing on Petramala's petition to terminate. It found by clear and convincing evidence that Petramala remained incapacitated and needed a guardian, but terminated the conservatorship and limited the guardianship to control over Petramala's medical, psychiatric, psychological, or other professional care, counseling, treatment, or service.

¶17 MCPF then petitioned the superior court to approve its accounting and request for fees in connection with the fiduciary services it had provided to Petramala over the preceding two years. Petramala objected generally to the petition and requested a hearing.

¶18 In a separate proceeding, Morse obtained an injunction against harassment prohibiting Petramala from contacting her "except through attorneys, legal process, [and] court hearings" and through his guardian and court appointed counsel. The injunction also prohibited Petramala from going to or near

Morse's workplace. Petramala petitioned the court to remove Morse as his GAL on the grounds that the injunction against harassment created a conflict of interest that prevented her from representing his best interests.<sup>2</sup>

¶9 The superior court conducted a hearing on MCPF's petition for approval of its accounting and Petramala's motion to remove Morse as his GAL. Petramala did not appear at the hearing. His counsel advised the court that he was not present because of the injunction against harassment obtained by Morse and asked it to continue the hearing, which the court denied.

¶10 After hearing argument on Petramala's motion to remove Morse as GAL, the superior court denied the motion in an unsigned minute entry. The court found no conflict of interest based on the history of the case and Petramala's conduct. It opined that a new GAL would only face the same issues that Morse faced with Petramala. The court ordered that Petramala could contact Morse for purposes relating to her duties as GAL once per business day, and only during business hours, via telephone, facsimile, or electronic mail. The court also granted Morse's unopposed request for an award of fees and costs arising out of her service as Petramala's GAL.

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<sup>2</sup> Petramala also requested the court's permission to defend himself in the proceedings on the injunction against harassment.

¶11 In the same hearing, the superior court heard argument on MCPF's request for fees. Petramala's counsel stated that Petramala objected only to MCPF's request for authorization to collect its fees from him now or in the future, and not to MCPF's time expended or billed. The court approved MCPF's accounting in a signed order.

¶12 Petramala filed a motion for new trial on MCPF's petition for approval of its accounting, Morse's petition for award of fees and costs, and Petramala's petition for removal of Morse. He also challenged the court's order limiting his contact with Morse. He argued he was denied a fair trial because he was not able to attend the hearing to present his testimony regarding why the court should have denied MCPF's petition for approval of its accounting. In support of his motion, he offered his affidavit stating that he wanted to testify (1) that MCPF's bills were not warranted because its actions as his fiduciary had violated his constitutional rights, and (2) that Maricopa County should not pay Morse's attorneys' fees because it would be an illegal use of tax dollars. The court denied the motion. Petramala timely appealed.

#### **JURISDICTION**

¶13 We first consider whether this Court has jurisdiction over Petramala's appeal. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997) (stating

that an appellate court has an "independent duty to determine whether it has jurisdiction to consider an appeal").<sup>3</sup>

¶14 Petramala appeals the superior court's order denying his motion for new trial. Although such an order is generally appealable pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(F)(1) (2003), we are nevertheless bound to examine the "character of the proceedings which resulted in the order appealed from to ascertain jurisdiction in any particular case." *Maria v. Najera*, 222 Ariz. 306, 308, ¶ 9, 214 P.3d 394, 396 (App. 2009) (citation and internal quotation marks omitted). If the underlying order is not appealable, "appellate review may not be obtained by filing a motion for new trial and appealing from the denial of that motion pursuant to section 12-2101(F)(1)." *Id.* at ¶ 12.

¶15 Petramala's motion for new trial was directed at the court's unsigned minute entry denying his petition to remove Morse, and its signed minute entry approving MCPF's accounting.<sup>4</sup>

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<sup>3</sup> Pursuant to our August 4, 2010 order, the parties filed simultaneous briefs addressing the Court's jurisdiction to hear this appeal.

<sup>4</sup> Petramala's motion also asked for a new trial on the court's granting of Morse's petition for fees and costs, limiting his contact with Morse, and denying his request to represent himself in the proceedings brought by Morse involving the injunction against harassment. In his opening brief, Petramala presented argument only on the denial of his petition to remove Morse as his GAL; therefore, he waived review of the other issues.

On appeal, Petramala argues these orders were final, appealable orders pursuant to A.R.S. § 12-2101(J), which grants this Court jurisdiction over appeals from a "judgment, decree, or order" entered in any formal probate proceeding, provided the order is similar to a final judgment or decree. See *Ivancovich v. Meier*, 122 Ariz. 346, 353, 595 P.2d 24, 31 (1979).

¶16 The superior court's order denying Petramala's petition to remove his GAL is not appealable under A.R.S. § 12-2101(J). Procedurally, we lack jurisdiction to consider Petramala's petition to remove his GAL because the minute entry denying the motion for new trial was not signed. See Ariz. R. Civ. P. 58(a); *Eaton Fruit Co. v. Cal. Spray-Chem. Corp.*, 102 Ariz. 129, 130, 426 P.2d 397, 398 (1967). Substantively, we lack jurisdiction because the order denying the petition did not resolve the formal court-supervised guardianship proceedings, making the appeal interlocutory. See *In re Estate of McGathy*, CV-10-0102-PR, 2010 WL 4878290, at \*2, ¶ 10, \*4, ¶ 17 (Ariz. Dec. 02, 2010) (holding that A.R.S. § 12-2101(J) "permits appeal of the final disposition of each formal proceeding instituted in an unsupervised administration" but does not permit an interlocutory appeal before a final order is entered in a



supervised administration of an estate).<sup>5</sup> Therefore, we are without jurisdiction to consider Petramala's appeal of the court's denial of his motion for new trial on the GAL issue.

¶17 However, the superior court's order approving MCPF's accounting is appealable under A.R.S. § 12-2101(J), as it is a signed order and addresses the first and final accounting filed by MCPF in its capacity as Petramala's conservator. We therefore have jurisdiction over Petramala's appeal from the court's denial of his motion for new trial directed at that order. *McGathy*, CV-10-0102-PR, 2010 WL 4878290, at \*2, ¶ 10; *Maria*, 222 Ariz. at 308, ¶ 12, 214 P.3d at 396.

#### DISCUSSION

¶18 Petramala argues that the superior court erred in denying his motion for new trial, which was based on the court's approval of MCPF's accounting. Petramala moved for a new trial pursuant to Rule 59(a)(1) of the Arizona Rules of Civil Procedure, which permits a court to grant a new trial when an irregularity of the proceedings caused the moving party to be deprived of a fair trial.<sup>6</sup> We review a court's decision to deny

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<sup>5</sup> While Petramala could have sought special action review of the superior court's denial of his petition to remove his GAL, we decline to consider his appeal as a special action.

<sup>6</sup> Although Petramala's motion cited other provisions of Rule 59, it did not contain any discussion of, or argument pursuant to, those provisions.

a motion for new trial for an abuse of discretion. *White v. Greater Ariz. Bicycling Ass'n*, 216 Ariz. 133, 135, ¶ 6, 163 P.3d 1083, 1085 (App. 2007).

¶19 Petramala contends the accounting hearing was unfair because Morse's injunction against harassment prevented him from participating in the hearing or testifying in opposition to MCPF's petition. We disagree. The injunction expressly permitted Petramala contact with Morse through legal proceedings. Therefore, the injunction was not an impediment to his participation in the hearing, either telephonically or in person. Moreover, Petramala was represented at the hearing by his counsel, and the record contains no indication that he argued Petramala was prejudiced by not being at the hearing or made an offer of proof regarding the testimony Petramala would have offered if he had been present. *Valley Nat'l Bank of Ariz. v. Meneghin*, 130 Ariz. 119, 122, 634 P.2d 570, 573 (1981) ("Any irregularity in procedure may be waived if a party expressly or implicitly consents to it, as by acquiescing or failing to object to the procedure."); see also *Stewart v. Woodruff*, 19 Ariz. App. 190, 195, 505 P.2d 1081, 1086 (1973) (stating that the party offering evidence must make an offer of proof in order to preserve any claim that the exclusion of the evidence was

error).<sup>7</sup> Indeed, the court's minute entry description of the hearing indicates that Petramala's counsel expressly avowed that Petramala did not object to the time MCPF billed or expended in providing services to him.

¶20 We find no error in the superior court's denial of Petramala's motion for new trial on MCPF's request for approval of its accounting.

#### CONCLUSION

¶21 For the foregoing reasons, we affirm the superior court's denial of Petramala's motion for new trial as to the

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<sup>7</sup> Petramala's counsel did move to continue the hearing, but because Petramala has not provided a transcript of the hearing on appeal, we cannot determine the basis of the motion. See ARCAP 11(b). In any event, we assume the court's denial of that request was supported by the evidence. *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995).

accounting issue and dismiss for lack of jurisdiction the appeal as to the issue relating to the GAL.

/s/  
DONN KESSLER, Presiding Judge

CONCURRING:

/s/  
DANIEL A. BARKER, Judge

/s/  
JON W. THOMPSON, Judge