SUMMARY
April 15, 2021

2021COA50

No. 19CA1803, *In the Interest of Meggitt* — Probate — Persons Under Disability — Protection of Property of Protected Person — Protective Proceeding; Courts and Court Procedure — Jurisdiction of Courts — Personal Jurisdiction

A probate court ordered a protected person to pay the costs and fees incurred by a special conservator who had been appointed over a year earlier. On appeal, the protected person primarily contends that the probate court lacked jurisdiction to enter such an order because the petitioner (her attorney) did not serve her with notice of the original petition to appoint a conservator or notify her of the hearing on the petition as required by section 15-14-404(1), C.R.S. 2020.

A division of the court of appeals concludes that the protected person waited too long to challenge the appointment order. Applying *Scott v. Scott*, 136 P.3d 892, 896 (Colo. 2006), the division

concludes the probate court fully determined the rights of the parties when it appointed the special conservator and issued an order that defined the extent of the special conservator's authority to manage the protected person's financial assets and that restricted the protected person's rights to access some of her own financial assets. The division also concludes that section 15-14-404(1) addresses personal jurisdiction. Because the protected person's jurisdictional challenge is not timely, the division dismisses this portion of her appeal. The division rejects the protected person's remaining contentions and affirms the order.

COLORADO COURT OF APPEALS **2021COA50**

Court of Appeals No. 19CA1803
City and County of Denver Probate Court No. 17PR31493
Honorable Elizabeth D. Leith, Judge

In the Interest of Therese M. Meggitt, a Protected Person,

Appellant,

v.

Gregory R. Stross and Marcie M. McMinimee, former Special Conservator for Therese M. Meggitt,

Appellees.

APPEAL DISMISSED IN PART
AND ORDER AFFIRMED

Division III
Opinion by JUDGE FURMAN
Freyre and Johnson, JJ., concur

Announced April 15, 2021

The Lee Law Firm, LLC, Linda Lee, Denver, Colorado, for Appellant

Gregory R. Stross, Pro Se

Steenrod, Schwartz & McMinimee, LLP, Marcie McMinimee, Denver, Colorado, for Appellee McMinimee

¶ 1 A probate court ordered Therese M. Meggitt, a protected person, to pay the costs and fees incurred by a special conservator who had been appointed over a year earlier. On appeal, Meggitt primarily contends that the probate court lacked jurisdiction to enter such an order because the petitioner (her attorney) did not serve her with notice of the original petition to appoint a conservator or notify her of the hearing on the petition. She also contends the court made procedural errors in the appointment proceedings. Because Meggitt's challenges to the appointment proceedings are not timely, we dismiss this portion of her appeal.

¶ 2 Meggitt also contends that a lack of notice of the fee rate and costs incurred by the special conservator precludes compensation. Because Meggitt concedes that she "is not seeking review of the court's determination that the fees were reasonable," any error in not disclosing the special conservator's fee rate was harmless. She last requests, based on various statutes, that we should award her attorney fees. We deny her request.

¶ 3 We therefore affirm the order.

I. The Need for a Special Conservator

¶ 4 This probate case arose out of a pending dissolution of marriage case. Appellee Gregory R. Stross represented Meggitt in the dissolution case. The dissolution court appointed a guardian ad litem for Meggitt.

A. The Special Conservator Appointment Proceedings

¶ 5 On December 7, 2017, Stross filed a petition to appoint a conservator for an adult, initiating this probate case. He expressed concern for Meggitt's welfare, explaining that her "judgment and decision-making ability concerning financial affairs" were substantially impaired and that this had resulted in the "dissipation of assets in the marital estate." The next day, he moved for a forthwith hearing on the petition.

¶ 6 On December 8, 2017, the probate court granted the motion for a forthwith hearing. After a telephone hearing, the court entered a protective order appointing Melissa R. Schwartz as special conservator and appellee Marcie R. McMinimee as alternate special conservator under section 15-14-412(3), C.R.S. 2020. *See* § 15-14-412(3)(a) ("The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other

transaction authorized under this section. The special conservator has the authority conferred by the order and shall serve until discharged by order after report to the court.").

¶ 7 This order of appointment gave the special conservator the following authority:

> To assist dissolution counsel with completing a dissolution of marriage in Denver District Court . . . . The [s]pecial [c]onservator is authorized to file a petition for the appointment of a full or limited conservator should such a petition be determined to be necessary and appropriate. The [s]pecial [c]onservator is authorized to apply to the probate court for an expansion of authority as may be determined to be necessary.

¶ 8 (Stross testified at the attorney fees hearing that Meggitt received the details of the appointment order by the next day.)

¶ 9 The following month, McMinimee accepted the appointment as special conservator and, on January 16, 2018, the probate court issued letters granting her authority "to assist dissolution counsel with completing [the] dissolution of marriage." The probate court's order of appointment again authorized the special conservator to "file a petition for the appointment of a full or limited conservator should such a petition be determined to be necessary and

appropriate." The special conservator sent formal notice of the appointment to Meggitt by first class mail.

B. The Special Conservator's Authority

¶ 10 The special conservator made a forthwith motion to freeze and investigate some of Meggitt's accounts. On January 17, 2018, the probate court granted the special conservator's motion, ordering Meggitt's stock account and three credit card accounts "frozen until further Order of this Court." The court also authorized the special conservator to investigate Meggitt's accounts and freeze any other accounts she discovered.

¶ 11 A different attorney, Colleen McCoy, then entered her appearance as counsel for Meggitt.

C. Meggitt's Objections

¶ 12 On January 19, 2018, McCoy moved to terminate the special conservator (she did not move for reconsideration of the appointment order), arguing:

> The Protected Person's inability to manage property and business affairs has been resolved as follows:
>
> The Protected Person never required a [s]pecial [c]onservator nor ever requested one. The former attorney for the Protected Person in the

> Protected Person [sic] requested a [s]pecial [c]onservator be appointed against the protests of the Protected Person. The former attorney had his acquaintance appointed as the [s]pecial [c]onservator who then refused to remove the former attorney from the case. The Protected Person did not require at any point someone to manage her finances or business affairs for her and does not require it now. The Protected Person was not even informed of the previous hearing appointing a [s]pecial [c]onservator until after it had been completed.

¶ 13 The special conservator responded and recommended that a guardian ad litem be appointed and that Meggitt be independently evaluated by a third party. Meggitt disagreed with the appointment of the guardian ad litem in this case but agreed to an independent psychological evaluation.

¶ 14 On February 25, 2018, the court appointed the guardian ad litem from the dissolution of marriage case to "make recommendations regarding the appointment of the [s]pecial [c]onservator" and ordered an independent evaluation "to determine if the [s]pecial [c]onservatorship is warranted and whether the [guardian ad litem] appointment should continue."

¶ 15 On March 23, 2018, the parties moved to suspend the special conservator's authority. This was because the parties determined

that Meggitt did not need the services of both a guardian ad litem and a special conservator.

¶ 16 On June 25, 2018, Meggitt's guardian ad litem requested that the probate court terminate the special conservator because Meggitt's thought process and judgment had returned to normal following the "winding down of the contentious dissolution proceeding."

¶ 17 On July 13, 2018, the special conservator took no position on termination and moved the probate court for payment of fees and costs.

¶ 18 On October 12, 2018, the court noted that "termination of the [s]pecial [c]onservator's appointment is not at issue." The court then ruled that "Meggitt may pay the fees and costs" of the special conservator or "may attend mediation as ordered if she continues to object to payment." But apparently Meggitt did not cooperate with mediation.

¶ 19 Some months later — on March 13, 2019 — new counsel for Meggitt moved to dismiss the case, objecting for the first time to the probate court's jurisdiction to appoint the special conservator. Citing, among other statutes, sections 15-14-404(1) and 15-14-

406(6), C.R.S. 2020, the motion claimed that the court did not comply with service and notice provisions and that the court made procedural errors in the appointment proceedings.

¶ 20 The probate court denied the motion to dismiss, ruling that section 15-14-406(6) authorizes the probate court to "issue orders to preserve and apply the property of the respondent for support of the respondent after preliminary hearing and without notice to others."

D. The Special Conservator's Fees and Costs

¶ 21 The probate court later found the special conservator's fees and costs reasonable and entered an order for their payment.

¶ 22 Meggitt then moved for reconsideration of the reasonableness of the special conservator's fees. The court granted this motion. After a hearing, the court again found the special conservator's fees and costs reasonable and ordered Meggitt to pay $21,963.87 to the special conservator.

¶ 23 In Meggitt's appeal of the order to pay costs and fees, she raises an untimely collateral challenge to the earlier appointment order. We first address this challenge.

II. Appeal of Earlier Appointment Order is Untimely

¶ 24 Meggitt contends that the probate court lacked jurisdiction to order her to pay the costs and fees incurred by the special conservator because the court did not substantially comply with the service and notice provisions of section 15-14-404(1) before appointing the special conservator. While we agree that Meggitt did not timely receive a copy of the petition or notice of the hearing on the petition, we disagree with her contention because we conclude that the probate court's January 2018 order was a final order that Meggitt did not appeal. We therefore conclude Meggitt is too late to collaterally attack the lack of service and notice she received for the appointment hearing through this appeal of the 2019 order awarding the special conservator's fees and costs. So, we dismiss this portion of her appeal.

A. The January 2018 Order Was a Final, Appealable Order

¶ 25 C.A.R. 4(a) requires "the notice of appeal . . . [to] be filed . . . within 49 days of the . . . [final] order from which the party appeals."

¶ 26 In probate cases, as in other civil cases, an order "is final if it ends the particular action in which it is entered and leaves nothing

further for the court pronouncing it to do in order to completely determine the rights of the parties as to that proceeding." *Scott v. Scott*, 136 P.3d 892, 896 (Colo. 2006).

¶ 27 In *Scott*, our supreme court recognized that a probate petition in an unsupervised administration of an estate initiates an independent proceeding, so that an order disposing of the issues raised in the petition is considered a final, appealable order even if other issues are pending involving the same estate. *Id.* This is in accord with the consensus view reached by other states. *See Est. of Sheltra*, 238 A.3d 234, 238 (Me. 2020) (collecting cases).

¶ 28 Applying *Scott*, we conclude the probate court's January 17, 2018, order fully determined the rights of the parties because it defined the extent of the special conservator's authority to manage Meggitt's financial assets, and restricted Meggitt's rights to access some of her own financial assets. *See* 136 P.3d at 899. The special conservator's retention of authority to "petition for the appointment of a full or limited conservator should such a petition be determined to be necessary and appropriate" does not change this result because such a petition would define anew the nature and scope of a protective proceeding.

¶ 29 Thus, Meggitt had forty-nine days after January 17, 2018, to appeal the order appointing the special conservator. *See* C.A.R. 4(a). But she did not do so; instead she waited for over a year to challenge this order through an appeal of the order awarding the special conservator's fees and costs.

¶ 30 Because Meggitt's appeal of the January 17, 2018, order is untimely, we lack appellate jurisdiction to address her jurisdictional challenge. *See In re Estate of Anderson*, 727 P.2d 867, 869 (Colo. App. 1986) (failure to timely appeal a final order deprives this court of appellate jurisdiction); *see also Moore & Co. v. Williams*, 672 P.2d 999, 1003 (Colo. 1983).

¶ 31 To the extent other issues arose after the final January 17 order, Meggitt had the option to pursue C.R.C.P. 54(b) certification for those new issues. Our supreme court in *Scott* explained that the

> probate court is in a better position . . . to evaluate the status of a proceeding and to determine whether a claim is ripe for review or whether there is just reason to delay an appeal. . . . [T]he probate court can better manage judicial resources by clearly delineating the scope of a proceeding, applying the same rules of finality as in other civil cases, and incorporating C.R.C.P. 54(b).

Scott, 136 P.3d at 896; *see also Baldwin v. Bright Mortg. Co.*, 757 P.2d 1072, 1074 (Colo. 1988) ("[A] final judgment on the merits is appealable regardless of any unresolved issue of attorney fees . . . .").

B. Section 15-14-404(1) Implicates Personal Jurisdiction

¶ 32 But wait, says Meggitt. Even if she should have objected sooner, subject matter jurisdictional challenges may be raised at any time. She points out that the legislature stated in section 15-14-404(1) that failing to substantially comply with the service and notice provisions of this statute is "jurisdictional and thus precludes the court from granting the petition." This statute does not help her.

1. Standards of Review

¶ 33 Statutory interpretation is a question of law that we review de novo. *Trujillo v. Colo. Div. of Ins.*, 2014 CO 17, ¶ 12.

¶ 34 In interpreting a statute, "[o]ur objective is to effectuate the intent and purpose of the General Assembly." *Id.* "To determine the legislature's intent, we look first to the plain language of the statute." *People in Interest of J.W. v. C.O.*, 2017 CO 105, ¶ 18.

Where the statutory language is clear and unambiguous, we apply the plain and ordinary meaning of the provision. *Trujillo*, ¶ 12.

¶ 35 Determining the court's subject matter jurisdiction also is a question of law that we review de novo. *C.O.*, ¶ 17.

2. Analysis

¶ 36 Section 15-14-404(1) provides in pertinent part:

> A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent . . . . The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. *A failure to serve the respondent with a notice substantially complying with this subsection (1) is jurisdictional and thus precludes the court from granting the petition.*

(Emphasis added.)

¶ 37 "A court's jurisdiction generally consists of two elements: jurisdiction over the subject matter of the issue to be decided (subject matter jurisdiction), and jurisdiction over the parties (personal jurisdiction)." *C.O.*, ¶ 22 (citing *People in Interest of Clinton*, 762 P.2d 1381, 1386 (Colo. 1988)).

a. Subject Matter Jurisdiction

¶ 38 Section 15-14-404(1) does not address the probate court's subject matter jurisdiction.

¶ 39 "'[S]ubject matter jurisdiction' concerns the court's authority to deal with the *class* of cases in which it renders judgment, not its authority to enter a particular judgment within that class." *C.O.*, ¶ 24 (citing *In re Marriage of Stroud*, 631 P.2d 168, 170 (Colo. 1981)). "Because subject matter jurisdiction concerns only the class of cases that a court may adjudicate, where '[a] court has already obtained subject matter jurisdiction, a later failure to follow statutory requirements does not divest the court of subject matter jurisdiction.'" *Id.* (quoting *Clinton*, 762 P.2d at 1387).

¶ 40 The General Assembly has conferred probate courts with subject matter jurisdiction "over . . . protective proceedings for individuals domiciled in or having property located in this state . . . ." § 15-14-106, C.R.S. 2020; *see also* § 15-14-102(3), C.R.S. 2020 ("'Court' means the court or division thereof having jurisdiction in matters relating to the affairs of . . . protected persons. This court is the district court, except in the city and county of Denver where it is the probate court."). And probate

courts have "[e]xclusive jurisdiction to determine the need for a conservatorship or other protective order." § 15-14-402(1)(a), C.R.S. 2020.

¶ 41 We conclude the probate court had subject matter jurisdiction because the proceeding to determine the need for a conservatorship unquestionably falls within the class of cases that a probate court may hear under section 15-14-402(1). And a subsequent "failure to follow statutory requirements does not divest the court of subject matter jurisdiction." *C.O.*, ¶ 24 (quoting *Clinton*, 762 P.2d at 1387).

b. Personal Jurisdiction

¶ 42 In contrast to subject matter jurisdiction, personal jurisdiction "is based on having legal authority over the [respondent's person]." *Clinton*, 762 P.2d at 1386 (quoting Fleming James, Jr. & Geoffrey C. Hazard, Jr., *Civil Procedure* § 2.15 (3d ed. 1985)). "A defect in personal jurisdiction may arise where the departure from statutory procedure concerns notice, service of process, or residency limitations on a court's jurisdiction." *Gilford v. People*, 2 P.3d 120, 125 (Colo. 2000).

¶ 43 Section 15-14-404(1) describes the service and notice requirements for a hearing on a petition for conservatorship or

other protective order involving the affairs of a protected person. Substantial compliance with the service and notice provisions of section 15-14-404(1) therefore is necessary for the court to have personal jurisdiction over the affairs of a protected person.

¶ 44 But personal jurisdiction is waived if not timely asserted, *Currier v. Sutherland*, 218 P.3d 709, 714 (Colo. 2009), and is subject to the timely appeal requirements of C.A.R. 4(a). *See Moore & Co.*, 672 P.2d at 1003.

¶ 45 Because Meggitt mounted no challenges to the service and notice provisions of the appointment proceedings for over a year, we conclude that she waived any objection to the court having personal jurisdiction over her affairs. We therefore dismiss this portion of Meggitt's appeal.

¶ 46 We express no opinion on the propriety of the probate court's appointment order or procedures because we can't. But we note that the legislature amended section 15-14-412 to add the following:

> If the court appoints a special conservator without notice to the respondent, protected person, or any other person entitled to notice pursuant to section 15-14-404(2) and the person appointed is a professional without

> priority to serve pursuant to section 15-14-310(1) or a public administrator pursuant to section 15-12-622, the court shall, upon entry of the order of appointment of special conservator, simultaneously appoint a visitor to investigate and report to the court within fourteen days after the appointment as provided in section 15-14-113.5 [listing the duties of the visitor].

Ch. 270, sec. 4, § 15-14-412(3)(b), 2020 Colo. Sess. Laws 1318.

¶ 47 Because of our holding, we need not address Meggitt's remaining contentions regarding procedural errors in the appointment proceedings.

III. Special Conservator's Costs and Fees

¶ 48 Meggitt next turns to the order to pay costs and fees that she directly and timely appealed. She contends that the lack of notice of the fee rate and costs incurred by the special conservator precludes compensation. We conclude that any error was harmless.

¶ 49 "A fiduciary and his or her lawyer are entitled to reasonable compensation for services rendered on behalf of an estate." § 15-10-602(1), C.R.S. 2020.

¶ 50 A petition to appoint a special conservator

> shall include a statement by the applicant or petitioner disclosing the basis upon which any compensation is to be charged to the estate by the fiduciary and his or her or its counsel or shall state that the basis has not yet been determined. . . . This disclosure obligation shall be continuing in nature so as to require supplemental disclosures if material changes to the basis for charging fees take place.

§ 15-10-602(9).

¶ 51 The petition complied with section 15-10-602(9) by stating that "[t]he basis of compensation has not yet been determined." And Meggitt concedes that she "is not seeking review of the court's determination that the fees were reasonable." We therefore conclude that any error in not disclosing the special conservator's fee rate was harmless.

¶ 52 The special conservator is entitled to compensation because she provided services as a fiduciary on behalf of Meggitt's estate under court order. *See* § 15-10-602(1).

IV. Attorney Fees

¶ 53 Meggitt last requests we award her attorney fees. We deny her request because it is premised on her claim that Stross filed the petition in bad faith. But she did not preserve this claim for attorney fees in the probate court.

V. Conclusion

¶ 54 We dismiss the portion of Meggitt's appeal challenging the appointment of the special conservator. We otherwise affirm the probate court's order.

JUDGE FREYRE and JUDGE JOHNSON concur.