FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2789

PATRICK J. ARAGUEL, III,

Appellant,

v.

LESLIE LADON BRYAN, DARRIN FRANCIS, as Emergency Temporary Guardian of Jane Kaigler Araguel, and JANE KAIGLER ARAGUEL, the Ward (now deceased),

Appellees.

On appeal from the Circuit Court for Okaloosa County.
John T. Brown, Judge.

August 17, 2022

ROBERTS, J.

This appeal involves the trial court's authorization of the emergency temporary guardian ("ETG") to retain many of the ward's assets after she died. The ETG argues that he was entitled to retain the ward's assets to pay the guardianship estate fees and costs pursuant to section 744.527(2), Florida Statutes (2020). The appellant argues that the granting of the ETG's request to retain the ward's three individual retirement accounts ("IRAs") was error because section 222.21(2)(a), Florida Statutes (2020), prohibited it.

Based on the Legislature's intent to exempt IRAs from all claims except for those specified section 222.21(2)(d), we find the trial court erred by allowing the ETG to retain and use the IRAs to pay for the guardianship estate fees and costs.

In October of 2019, Jane Kaigler Araguel became unable to care for herself. As a result, both of her children, Patrick J. Araguel, III, and Leslie Ladon Bryan, petitioned the trial court to become her emergency temporary guardian and the guardian of her person and property. Instead of appointing either of the children, the trial court appointed a professional emergency temporary guardian. In June of 2020, Ms. Araguel died.

Shortly after Ms. Araguel died, the ETG filed a motion to retain many of Ms. Araguel's assets in order to pay for his expenses, his attorney's expenses, and Ms. Araguel's attorney's expenses as well as other costs and fees associated with the guardianship estate and other cases involving the same parties. Of interest, the ETG sought to retain three of Ms. Araguel's IRAs. The appellant objected because section 222.21(2)(a) exempted IRAs from the claims of all of Ms. Araguel's creditors and by operation of the third-party contract, the IRAs passed directly to him and Mr. Bryan upon Ms. Araguel's death.

During the hearing, the ETG argued that section 744.527(2) allowed him to retain Ms. Araguel's property until he was discharged. He further argued that the guardianship estate was not a creditor of Ms. Araguel because it was authorized to obtain payment prior to turning over her property to the party entitled to receive it. After hearing further argument from the appellant, the trial court sided with the ETG and granted the motion.

Because the issue on appeal involves the interpretation of statutes, our standard of review is *de novo*. *Wilcox v. Neville*, 283 So. 3d 878, 880 (Fla. 1st DCA 2019). When interpreting a statute, a court first looks to the plain language of the statute to determine the Legislature's intent. *Id.* If the language is clear and unambiguous, the court must give the words their plain and ordinary meaning without resorting to the rules of statutory construction. *Id.*

Section 222.21 pertains to the exemption of retirement accounts from creditors. It reads, in relevant part:

> (2)(a) Except as provided in paragraph (d), any money or other assets payable to an owner, a participant, or a beneficiary from, or any interest of any owner, participant, or beneficiary in, a fund or account is exempt from all claims of creditors of the owner, beneficiary, or participant if the fund or account is:
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> . . . .
>
> (d) Any fund or account described in paragraph (a) is not exempt from the claims of an alternate payee under a qualified domestic relations order or from the claims of a surviving spouse pursuant to an order determining the amount of elective share and contribution as provided in part II of chapter 732. . . .
>
> (e) This subsection applies to any proceeding that is filed on or after the effective date of this act.

Because the language used in section 222.21(2) is not confusing or ambiguous and the terms claims and creditors are not defined, we are required to give them their plain and ordinary meaning. Based on the plain meaning of the terms "claim" and "creditor," the fees and costs associated with the guardianship estate fall within those terms. The ETG has argued that the term "claim," as defined in sections 731.204(4) and 744.1025, Florida Statutes (2020), should apply. However, section 731.204 specifically states when the definition applies, and it does not include a citation to section 222.21. Since section 222.21(2) does not call for an exemption for guardianship estate fees and costs, those claims cannot attach to Ms. Araguel's IRAs.

Even though section 744.527(2) allows a guardian to retain the funds in his possession, there is no evidence that the IRAs remained in the ETG's possession by operation of law or by the third-party contract. IRAs pass directly to their beneficiaries at the time of the owner's death. As a result, the IRAs should have passed to the beneficiaries at the time of Ms. Araguel's death.

Since section 744.527(2) does not explicitly place a lien on the property that is in a guardian's possession, it cannot override the Legislature's explicit direction to exempt IRAs from such claims. Accordingly, we reverse that portion of the trial court's order and affirm all other aspects of it.

REVERSED in part and AFFIRMED in part.

LONG, J., concurs; B.L. THOMAS, J., dissents with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

B.L. THOMAS, J., dissenting.

I respectfully dissent. The guardian is not a "creditor" under section 222.21, Florida Statutes, and accordingly, may retain the funds in the IRA as the trial court ordered. Pursuant to Florida Guardianship Law, a guardian "may retain from the funds in his or her possession a sufficient amount to pay the final costs of administration, including guardian and attorney's fees *regardless of the death of the ward*, accruing between the filing of his or her final returns and the order of discharge." § 744.527(2), Fla. Stat. (2020) (emphasis added).

Guardians are appointed by the court and required to incur expenses on behalf of the ward or estate. Administrative expenses are not "claims" made by creditors, as section 744.1025, Florida Statutes, provides that the definitions contained in the Florida Probate Code are applicable to Florida Guardianship Law. The Probate Code specifically excludes administrative expenses from the definition of a "claim." Section 731.201(4) defines a "claim" as "a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense." The statute specifies that "[t]he term does not include an expense of administration or estate,

inheritance, succession, or other death taxes." *Id.* Accordingly, a guardian cannot be considered a "creditor" of the ward.

I would affirm the trial court's order.

John H. Adams and Cecily M. Parker of Beggs & Lane, RLLP, Pensacola, for Appellant.

Charles F. Beall of Moore, Hill & Westmoreland, P.A., Pensacola; Tracy O. Strom of Tracey O. Strom, P.A., Fort Walton Beach; Lois B. Lepp of Lois B. Lepp, P.A., Pensacola; Tara A. Hagan of Chesser & Barr, P.A., Shalimar; Lisa Jo Spencer of Lisa Jo Spencer, P.A., Mary Ester, for Appellees.