

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

In re Guardianship of Roland T. Martino,)
an incapacitated person.)

_____)
LESA MARTINO,)

Appellant,)

v.)

CAROL COLOMBO, as former guardian,)
and JAMES S. EGGERT,)

Appellees.)

_____)
LESA MARTINO,)

Appellant,)

v.)

DEEBS ELDER LAW, P.A.,)

Appellee.)

Case No. 2D19-533

Case No. 2D19-670

CONSOLIDATED

Opinion filed July 8, 2020.

Appeals from the Circuit Court for
Hillsborough County; Wesley Tibbals,
Judge.

Leslie M. Sammis and Jason D. Sammis
of Sammis Law Firm, P.A., Tampa, for
Appellant.

James S. Eggert of Owens Law Group,
P.A., Ruskin, for Appellees Carol

Colombo and James E. Eggert.

Ha Thu Dao of Deeb Elder Law, P.A.,
St. Petersburg (withdrew after briefing),
for Appellee Deeb Elder Law, P.A.

SLEET, Judge.

Lesla Martino challenges two orders entered by the trial court in guardianship proceedings concerning her father, Ronald T. Martino (the Ward). In appeal 2D19-533, she challenges the trial court's order denying with prejudice her objections to the fee petitions filed by the Ward's former court-appointed guardian and the guardian's attorney. In appeal 2D19-670, she challenges the trial court's order requiring her to pay as a sanction attorney fees incurred by Traci Samuel, the Ward's successor guardian, pursuant to section 57.105(1)(b), Florida Statutes (2019). We have consolidated these appeals for the purposes of this opinion only, and we affirm both orders of the trial court.

On February 3, 2017, Letters of Plenary Guardianship of the Person and Property of the Ward were issued, and Carol Colombo was appointed the plenary guardian. The record before us indicates a pattern of behavior by Martino that made it difficult for Colombo to do her job. Martino's conduct included repeatedly contacting Colombo with complaints about the facility where the Ward was residing; attempting to relocate the Ward to another facility without Colombo's consent; taking the Ward out of the facility for day trips against the wishes of facility staff; emailing more than sixty complaints directly to the facility; posting negative comments about the facility on social media; and defying court orders, including gag orders to stop posting about the facility on social media. Finally, on November 16, 2017, Martino filed a petition to have Colombo removed as guardian, and on December 13, 2017, Colombo resigned. At a

later hearing on a motion filed by Martino to remove the successor guardian, Colombo testified that the reason for her resignation was her exasperation with Martino and that "finally I said that's it. I—I'm done with—with it. I can't do this anymore."

I. Martino's interested person status

Following Colombo's resignation, both she and her attorney filed petitions with the court seeking payment of their fees pursuant to section 744.108, Florida Statutes (2017). Martino filed objections to both petitions, challenging the reasonableness of the amounts sought and the validity of the work performed. Following a hearing, the trial court entered an order determining that pursuant to Hayes v. Guardianship of Thompson, 952 So. 2d 498 (Fla. 2006), Martino was not an interested person pursuant to section 731.201(23), Florida Statutes (2017), and that therefore she lacked standing to object to the fee petitions. Martino now appeals that order.

Pursuant to section 744.108(1), "[a] guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the ward." Subsection (6) of that statute provides that "[a] petition for fees or expenses may not be approved without prior notice to the guardian and to the ward, unless the ward is a minor or is totally incapacitated." (Emphasis added.) Although the statute limits notice to the guardian and the ward, Florida Probate Rule 5.060(a) provides that "[a]ny interested person who desires notice of proceedings in the estate of a . . . ward may file a separate written request for notice of further proceedings," and subsection (b) of the rule states that "[a] party filing a request shall be served thereafter by the moving party with notice of further proceedings and with copies of subsequent pleadings and

documents as long as the party is an interested person." (Emphasis added.) And while Florida Probate Rule 5.700(a) "addresses objections to guardianship reports and allows 'interested persons' to file an objection to any part of a guardianship report, there is no specific guardianship rule that provides for notice of, or objections to, petitions for guardian's or attorney's fees beyond what is provided in section 744.108." Hayes, 952 So. 2d at 506 (emphasis added).

Here, it is undisputed that Martino filed the request for notice pursuant to the rule. She maintains that because she is the daughter of the Ward and requested notice, pursuant to Hayes she is entitled to notice of further proceedings as an "interested person" and that the purpose of such notice is to enable her to participate in the proceedings to the extent that she may challenge the fee petitions filed by Colombo and her attorney. We disagree.

Section 731.201(23) defines "interested person" as "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved."¹ But "[t]he meaning [of 'interested person']", as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings." Id. In Hayes, the Florida Supreme Court concluded that whether "heirs of the ward may be considered 'interested persons' for the purpose of participating in a guardianship proceeding, including a proceeding for

¹Section 731.201 states that the definitions listed, "[s]ubject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires," apply to chapter 744. See also § 744.1025, Fla. Stat. (2015) ("The definitions contained in the Florida Probate Code shall be applicable to the Florida Guardianship Law, unless the context requires otherwise, insofar as such definitions do not conflict with definitions contained in this law."); Fla. Pro. R. 5.015 ("The definitions and rules of construction stated or referred to in . . . chapters 731 . . . and 744, Florida Statutes, as amended from time to time, shall apply to these rules, unless otherwise defined in these rules.").

guardian's or attorney's fees" depends on "the circumstances of the case and the specific issues involved." Hayes, 952 So. 2d at 508 (emphasis added); see also In re Guardianship of Trost, 100 So. 3d 1205, 1210 (Fla. 2d DCA 2012) ("The definition of 'interested person' requires the trial court to evaluate the nature of both the proceeding and the interest asserted.").

As such, a party does not have a right to "interested person" status simply by filing a rule 5.060(a) request for notice and being related to the ward. Rather, interested person status is a privilege bestowed upon an individual as determined by the trial court. See Trost, 100 So. 3d at 1210 ("The trial court must decide on a case-by-case basis whether a party who receives notice of petitions is an 'interested person' for purposes of a guardianship proceeding." (emphasis added)). And "because the question of who is an 'interested person' may vary as the circumstances of the guardianship change," the supreme court has explained that it "cannot provide strict guidelines for the lower courts to follow in deciding whether a party who receives notice of a petition for . . . fees pursuant to a request made under rule 5.060 is a 'person who may reasonably be expected to be affected by the outcome of the . . . proceeding.'" Hayes, 952 So. 2d at 508. The court did, however, note that "[i]n guardianship proceedings, the overwhelming public policy is the protection of the ward." Id. at 505 (citing § 744.1012).

Here, the trial court determined that Martino was not an interested person because "[t]he record in this case is replete with examples of [her] interfering with the administration of the guardianship and the care of the Ward resulting in unnecessary expense to the guardianship estate." Based on "the circumstances of the case and the specific issues involved," see Hayes, 952 So. 2d at 508, we cannot say that the trial

court erred in making this determination as it is supported by the record. Although at the outset of the guardianship proceeding Martino "may reasonably [have] expected to be affected by [its] outcome," see § 731.201(23), "as the circumstances of the guardianship change[d]" due to Martino's own actions, she squandered her privilege to "interested person" status by her own inappropriate conduct, see Hayes, 952 So. 2d at 508-09 (upholding the trial court's conclusion that the heirs in that case were not interested persons where not only did they fail to file a rule 5.060 request for notice but where it also was "inescapable that the fees they . . . claim[ed were] excessive came [about] as a result of their own misconduct"). Martino's interference with the administration of Colombo's duties and willful disregard of trial court orders resulted in increased legal bills for the guardian as well as additional expenses to the Ward's estate and threatened the well-being of the Ward.²

Despite the fact that Martino filed the rule 5.060 request for notice, the trial court's determination that Martino is not an interested person necessarily divested her of standing to object to the fee petitions of Colombo and her attorney. In Hayes, 952 So. 2d at 509, the supreme court held "that in guardianship proceedings concerning . . . fees under section 744.108, the only persons entitled to standing are the attorney making [a] fee request, the guardian, the ward, and those 'interested persons' who have filed written requests for notice under [rule] 5.060." As Martino fits none of these categories, we affirm the trial court's order denying with prejudice her objections to the fee petitions filed by Colombo and her attorney due to Martino's lack of standing.

²We also note that under the specific circumstances of this case, where Colombo resigned and a successor guardian was appointed, the successor guardian provided additional oversight to review the fee petitions of Colombo and her attorney and object where necessary on the Ward's behalf.

II. Section 57.105 fees as a sanction

Martino also appeals the trial court's order awarding the successor guardian's attorney section 57.105(1)(b) fees as a sanction. The basis for the award stemmed from the trial court's prior determination that Martino did not have standing to object to the fee petitions of the previous guardian, Colombo, and her attorney. Samuel was named successor guardian on February 5, 2018. On October 15, 2018, in the normal course of the guardianship, Samuel's attorney, Ha Thu Dao, filed a petition for attorney fees and costs for services rendered to Samuel from May 31 through October 4, 2018. Martino objected to the petition, and the trial court scheduled a fee hearing for February 18, 2019.

Before that fee hearing could be held, the trial court held a hearing on the fee petitions of Colombo and her attorney on December 18, 2018, and ruled that Martino was not an interested person and thus did not have standing to object to those fee motions. Based on that ruling, Attorney Dao and her firm served Martino with its verified motion for relief pursuant to section 57.105(1), seeking attorney fees as a sanction against Martino for filing objections that she knew or should have known she did not have standing to file. Pursuant to section 57.105(4), the motion was served—but not filed—on December 19, 2018, and when Martino failed to withdraw her objections within the twenty-one-day statutory safe harbor time period, the motion was filed with the court. Following a hearing, the trial court determined Martino's objections to be without merit and granted the motion for section 57.105 fees, finding as follows:

Martino knew or should have known, based on the Court's ruling and order concerning Lesa Martino's lack of interested person status, that the same statutory principles and pertinent case law apply with equal force to the fee petition filed by [Attorney Dao] for [Samuel], and that the analysis of the law, as applied to the material facts of the former

counsel's fee petition would yield the same result. Therefore, the failure to formally withdraw the offending Pro Se Objection, Objection and Corrected Objection, violates section 57.105(1)(b).

The court therefore assessed \$1800 against Martino to be paid to Dao's law firm.

Martino argues on appeal that the trial court's ruling ignores the fact that the objections at issue involve a different attorney working for a different guardian than were involved in the trial court's prior determination. She maintains that the court's ruling that she was not an interested person who could challenge the fee petitions of Colombo and her attorney pertained specifically to Martino's conduct toward Colombo.

We see no merit in this argument.

Section 57.105³ provides as follows:

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee . . . to be paid to the prevailing party . . . on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party . . . knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

³Although Martino does not argue that section 57.105(1) fees could not be levied against her because the statute authorizes such a sanction against a "losing party" and she is not a party to the guardianship, we nevertheless point out that this court has held that "[f]or the purpose of assessing fees pursuant to section 57.105, the term 'party' is subject to an expanded definition. ' Parties include[] not only those whose names appear upon the record, but all others who participate in the litigation by employing counsel, or by contributing towards the expenses thereof, or who, in any manner, have such control thereof as to be entitled to direct the course of [the] proceedings.' ' " Zweibach v. Gordimer, 884 So. 2d 244, 248 (Fla. 2d DCA 2004) (second and third alterations in original) (quoting Lage v. Blanco, 521 So. 2d 299, 300 (Fla. 3d DCA 1988)).

The trial court's prior ruling that Martino was not an interested person and thus did not have standing to challenge fee petitions cited Hayes and stated that Martino's "interfer[ence] with the administration of the guardianship and the care of the Ward result[ed] in unnecessary expense to the guardianship estate." As such, Martino was made aware that pursuant to case law her conduct toward the guardian legally could be considered in the determination of her status as an interested person and that the trial court viewed the behavior that she had directed at Colombo to be grounds on which to deny her that status. She therefore should have known that her conduct toward Samuel would foreclose her interested person status—and thus divest her of standing—with regard to her objections to Attorney Dao's fee petition.

The record before this court indicates that once Samuel was named successor guardian, she almost immediately became the target of Martino's harassment. Martino engaged in a disturbing course of conduct directed not only at Samuel but also focusing on Samuel's adult daughter. Martino eventually filed a motion to remove Samuel as the guardian, but following a hearing on the motion, the trial court found it to be "completely without merit" and denied it. In that same September 4, 2018, order—entered two months before the filing of Martino's objections to Attorney Dao's fee petition—the trial court found that "the Guardian has a well-founded fear that Lesa Martino is capable of certain physical acts that would endanger her safety as well as those involved in the care of the Ward." The trial court authorized law enforcement to arrest Martino "immediately upon probable cause that she has violated any of the terms of this [o]rder."

Accordingly, Martino "knew or should have known" that her behavior toward Samuel—which was as egregious, if not more so, as her behavior toward

Colombo—would be considered by the trial court as grounds to deny her interested person status for purposes of objecting to the fee petition of Samuel's attorney. See § 57.105(1). This is especially so because after entering the original order regarding Colombo and her attorney—but prior to Martino filing her objection to Attorney Dao's fee petition—the trial court entered an order disallowing any contact between Martino and the Ward because her "actions have led to the intrusion of the Ward's privacy and dignity and disruption of his care." Based on the trial court's prior ruling, it is disingenuous for Martino to argue that she did not know or should not have known that the trial court found her behavior detrimental to the Ward and grounds to find that she had relinquished the privilege of interested person status.

Martino also argues on appeal that imposition of section 57.105 fees based on the trial court's prior ruling is improper while the appeal of that ruling was still pending in appeal 2D19-533. However, this court has found that section 57.105(1) "authorizes an award of attorney's fees 'on any claim or defense *at any time* during a civil proceeding or action.'" Country Place Cmty. Ass'n v. J.P. Morgan Mortg. Acquisition Corp., 51 So. 3d 1176, 1180 (Fla. 2d DCA 2010) (quoting Bridgestone/Firestone, Inc. v. Herron, 828 So. 2d 414, 417 (Fla. 1st DCA 2002)). As such, the pending appeal did not prevent the trial court from assessing the fees.

In conclusion, we affirm both the trial court's order denying with prejudice Martino's objections to the fee petitions filed by Colombo and her attorney and its order requiring her to pay attorney fees to Samuel's attorney.

Affirmed.

CASANUEVA, J., Conkurs.
ATKINSON, J., Dissents.