

Third District Court of Appeal

State of Florida

Opinion filed July 31, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2481
Lower Tribunal No. 07-1786

Taketha Lovest,
Appellant,

vs.

David Mangiero,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Maria M. Korvick, Judge.

KWG Family Legal & Mediation Services, LLC, and Kristen Goss (Ft. Lauderdale); Spectrum Law Firm Miami, PLLC and Sandy Boisrond, for appellant.

Young, Berman, Karpf & Gonzalez, P.A., and Andrew S. Berman, for appellee.

Before FERNANDEZ, MILLER and GORDO, JJ.

FERNANDEZ, J.

Taketha Lovest appeals the guardianship court's Order for Discharge and Denying Motion for Rehearing/Reconsideration, which overruled her objections that (1) the guardianship court's July 2017 and November 2011 Orders violated her due process rights, (2) the guardianship court lacked subject matter jurisdiction, and (3) the appellee David Mangiero should have provided proper accountings. We affirm the guardianship court's order.

Lovest is a beneficiary of artist Pervis Young's will. In 2007, the court established Mangiero as Young's guardian of the property. After Young passed away in 2010, Mangiero became the successor personal representative of Young's estate. Because the estate had outstanding debts, Mangiero filed a petition to pay the debts using Young's artwork. The guardianship court granted the petition the next day on November 16, 2011, but it required that creditors receive art equal to 200% of their claims to offset appraisal and broker costs. Three months later, Eddie Mae Lovest, who lives at the same address as Taketha Lovest, sent a letter acknowledging receipt of the order but objecting to paying 200% of claims and not being at the initial hearing. The court held a rehearing that February.

On May 16, 2017, Mangiero filed another petition to pay the debts with Young's artwork, stating that his efforts to pay the creditors cash had failed because there was no marketplace for the art. Mangiero sent notice of the petition and hearing by certified mail to Lovest on May 22, 2017, evidenced by a stamp on an

undeliverable envelope to her. On July 19, 2017, the guardianship court authorized the petition. On October 22, 2018, Mangiero filed annual reports for the past seven years, which he had not done since 2011. On July 4, 2018, Lovest filed the three abovementioned objections to the guardianship court's order. The guardianship court overruled all three objections, and this appeal followed.

The standard of review for lack of due process, subject matter jurisdiction, and accounting is *de novo*. See Dockswell v. Bethesda Mem. Hosp., Inc., 210 So. 3d 1201, 1206 (Fla. 2017) (statutory interpretation is reviewed *de novo*); VMD Fin. Servs. v. CB Loan Purchase Assocs. LLC, 68 So. 3d 997, 999 (Fla. 4th DCA 2011) (due process is reviewed *de novo*); Mora v. McDonough, 934 So. 2d 587, 588 (Fla. 1st DCA 2006) (lack of jurisdiction is purely a legal issue).

Florida Probate Rule 5.060(a) provides that “[a]ny interested person who desires notice . . . may file a separate written request for notice of further proceedings.” The Florida Supreme Court has held that the trial court needs an opportunity to weigh whether a party is “interested” after they file a form under 5.060. Hayes v. Guardianship of Thompson, 952 So. 2d 498, 507 (Fla. 2006). Nothing in the record indicates that Lovest filed a request for notice form pursuant to rule 5.060, so the guardianship court could not determine if she was an “interested party.” Thus, she was not entitled to notice.

Additionally, the guardianship court retained subject matter jurisdiction over the case. Section 744.527(2), Florida Statutes (2011) states that when a guardian applies for discharge, they “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.” This statute includes assets like Young’s artwork as well as funds. See Bivins v. Guardianship of Bivins, 223 So. 3d 1006, 1007 (Fla. 4th DCA 2017); Midland Nat’l Bank and Trust v. Comerica Trust Co. of Fla., N.A., 616 So. 2d 1081, 1084 (Fla. 4th DCA 1993). In the present case, the guardianship court retained jurisdiction after Young’s death while Mangiero paid the outstanding guardian and attorney fees.

Finally, if a guardian fails to provide a timely annual report, “the judge may impose sanctions which may include contempt, removal of the guardian, or other sanctions provided by law in [section] 744.3685.” § 744.367(5) Fla. Stat. (2011). Section 744.3685 provides that the court shall order the guardian to file the report within fifteen days or be held in contempt or personally fined. § 744.3685 Fla. Stat. (2011). In the present case, the guardianship court should have required Mangiero to provide proper accountings each year. However, because the court never ordered him to provide the accountings, it never gave him a fifteen-day deadline. The issue is thus moot. Accordingly, we affirm the guardianship court’s order.

Affirmed.