

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Garrett Hill and Taylor Hill

Appellants-Petitioners

v.

William Hayes Hill and Personal Financial Services

Appellees-Respondents

March 18, 2024

Court of Appeals Case No.
23A-ES-1843

Appeal from the Monroe Circuit Court
The Honorable Geoffrey Bradley, Judge

Trial Court Cause Nos.
53C01-2007-GU-87
53C01-2201-ES-16

Memorandum Decision by Judge Riley

Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

- [1] In this consolidated appeal, Appellants-Petitioners, Garrett Hill (Garrett) and Taylor Hill (Taylor) (collectively, the Hills), appeal the trial court's judgments entered against them as former personal representatives in the Estate of Sierra S. Hill (Estate) and as former co-guardians of the person and estate of William Hayes Hill (Guardianship).
- [2] We affirm in part, reverse in part, and remand for further proceedings.

ISSUES

- [3] The Hills present this court with two issues on appeal, which we restate as:
- (1) Whether the trial court abused its discretion in entering judgments against the Hills for neglecting their fiduciary duties in both the Estate case and the Guardianship case by failing to preserve assets; and
 - (2) Whether the trial court abused its discretion by assessing an award of attorney fees against the Hills to reimburse Hayes for legal fees incurred to remove the Hills as personal representatives in the Estate case and as guardians in the Guardianship case.

FACTS AND PROCEDURAL HISTORY

- [4] On July 15, 2020, Garrett and Taylor, adult children of William Hayes Hill (Hayes), petitioned the trial court to be appointed as the permanent co-guardians over the person and estate of their father, Hayes, in the Guardianship case. The Hills alleged that their father resided at a rehabilitation center and was unable to maintain and care for his personal and financial affairs or make medical decisions. On July 21, 2020, the trial court conducted a hearing on the Hills' petition, found Hayes to be incapacitated, and appointed Taylor and Garrett as his co-guardians.
- [5] Three days later, on July 24, 2020, the Hills, in their capacity as Hayes' guardians, petitioned the trial court to be appointed as the personal representatives in the unsupervised estate of their grandmother, Sierra S. Hill (Sierra), in the Estate case. Sierra passed away on June 27, 2020, and Hayes, who was her sole heir, was unable to serve as the personal representative of Sierra's estate due to his incapacity. On July 28, 2020, the trial court appointed the Hills as co-personal representatives of the Estate and ordered Taylor and Garrett each to post a surety bond in the amount of \$25,000. Only one surety bond in the amount of \$25,000 was subsequently posted.
- [6] On January 27, 2021, the Hills filed their guardian's inventory, stating that the Guardianship estate's assets were worth \$140,000, with Hayes' residence constituting the largest part of the Guardianship estate. On January 21, 2022, the Hills, as personal co-representatives of Sierra's Estate, filed an "Inventory," reflecting that the date of death value of the Estate was approximately

\$130,000, with Sierra's real estate representing the largest asset. (Appellants' App. Vol. II, p. 46).

[7] On April 6, 2021, Hayes filed a verified petition for authority to retain counsel in the Guardianship case, which was granted by the trial court on April 26, 2021. On September 2, 2021, the Hills filed a petition to substitute guardian and nominated Personal Financial Services, LLC (PFS) to serve as successor guardian. On September 20, 2021, the trial court appointed PFS to serve as successor guardian over Hayes' estate, and supplemented the order on October 18, 2021, by appointing PFS as limited guardian over Hayes' person. On September 21, 2021, Hayes filed a verified petition for the removal of the personal representatives in the Estate case, alleging that the Hills had committed malfeasance in the administration of Sierra's Estate. Hayes contended that the Hills had not paid the property taxes on Sierra's real estate resulting in the property being scheduled for a tax sale. He also asserted that Taylor had resided in Sierra's residence rent-free and that Taylor and Garrett were driving the Estate's cars. Additionally, he pointed out that the Hills had failed to provide an accounting of the expenditures of the Estate, which he had requested eight months prior to filing the petition for their removal.

[8] On October 25, 2021, the trial court conducted a hearing on Hayes' petition to remove the Hills as personal representatives of his mother's estate in the Estate case. On November 15, 2021, the trial court ordered the Hills to distribute the Estate assets and to file their final accounting within thirty days. On January 13, 2022, after failing to close the Estate and to file an accounting, the trial

court removed the Hills as co-personal representatives in the Estate, appointed PFS as successor personal representative, and converted the Estate from an unsupervised to a supervised administration.

[9] On January 21, 2022, an unsigned and unverified “Personal Representative’s Inventory” was filed in the Estate case without a certificate of service which appeared to represent the Hills’ final accounting of their administration of the Estate. (Appellants’ App. Vol. II, p. 46). On March 14, 2022, an unsigned, unlabeled, and unverified document lacking a certificate of service was filed in the Guardianship case and appeared to represent the final accounting of the Hills’ administration in the Guardianship case. The Hills did not request, and the trial court did not on its own motion, set the final accountings for a hearing.

[10] On December 7 and 12, 2022, PFS filed its objections to the Hills’ accounting in the Estate case and the Guardianship case respectively, listing numerous irregularities and inconsistencies. The trial court conducted its first consolidated hearing on PFS’s objections on March 27, 2023. On the same day as the hearing, another unsigned, unverified document labeled “Additional Receipts” was filed in the Guardianship case, which contained copies of disbursements that had been filed previously, as well as a one-page document reflecting the hours that Taylor had provided care for Hayes, with an assigned hourly rate of \$20 for daytime care and \$30 for overnight care. (Appellee’s App. Vol. II, p. 129). During the hearing, Taylor provided most of the testimony, but Garrett briefly mentioned that he drove Sierra’s pick-up truck on a couple of occasions because “it had been sitting.” (Transcript p. 42). During

the proceedings, PFS set forth its objections to the Guardianship and Estate final accountings, which were further explained by the trial court as the trial judge walked Taylor, point by point, through the objections and advised her what additional documents or information she needed to provide. Specifically, the trial court informed the Hills to provide invoices or receipts for disbursements and to clarify the purposes of the expenditures as benefiting the Estate or Guardianship. The trial court further suggested that the Hills provide copies of the real estate appraisal of Sierra's residence, advise on the status of filing Sierra's personal income tax returns, explain the purpose of the automobile insurance payments for Sierra's vehicles, and clarify the status of a printer that had been purchased in the Guardianship case. The trial court continued the hearing to give the Hills the opportunity to submit additional documents to respond to PFS's objections by April 27, 2023.

[11] On April 24, 2023, the Hills filed their responses to PFS's objections in both the Estate and Guardianship cases. Although these supplemental final accountings were not verified, they were signed by Taylor and contained a certificate of service. In the supplemental final accounting in the Guardianship case, Taylor advised that she had written checks to herself for caring for Hayes and taking him to medical appointments and therapy. Other disbursements were made from the Guardianship account to pay for groceries, gas, and purchases at retail stores. In the supplemental final accounting for the Estate, Taylor provided receipts for utility payments, an appraisal of Sierra's house, sixteen photos of the inside of the residence, and multiple withdrawals for groceries, pet supplies,

veterinary care, gas, and purchases at retail stores. Taylor elaborated in her response that Sierra's house was in an "unlivable condition" at the time of Sierra's death. (Appellants' App. Vol. II, p. 96).

[12] On May 24, 2023, the trial court conducted a second consolidated hearing in the Estate and Guardianship cases to receive evidence on PFS's objections to the Hills' final accountings. During the hearing, Taylor presented all the testimony; Garrett was present but did not testify. Taylor advised the court that she was responsible for most of the duties as personal representative of the Estate and that Garrett had "helped her[.]" (Tr. p. 51). Despite having previously assessed Sierra's residence as "unlivable," Taylor testified that she lived alone in the residence rent-free from July through October 2021. When she left the residence, Taylor did not disconnect any utilities, except for gas and electric service. She conceded that even though she cleaned out Sierra's house, "there was still stuff in the garage" when she vacated Sierra's house. (Tr. p. 55). Taylor informed the court that, at Sierra's passing, Sierra owned two twenty-year old vehicles, one of which Taylor used to transport Hayes to medical appointments and she had borrowed another one when the battery in her own car died. Taylor admitted that no final tax returns had been filed in the Estate case as she did not "think [she] had the information to be able to do so." (Appellants' App. Vol. II, p. 96). Taylor did not investigate Sierra's investment accounts, nor did she ascertain whether Sierra received pension payments from her former employer. Elizabeth Ruh, owner of PFS, the successor representative in the Estate, testified that it would take her approximately six

hours to assemble the documents to prepare the tax return and to file it with the IRS.

[13] Sierra's real estate was slated for a tax sale because the Hills had neglected to pay the property taxes, despite having received the invoices. Taylor paid utility bills for heat and water at Sierra's residence, as well as the insurance and registration on Sierra's vehicles. Taylor continued to pay the AT&T invoices for internet service, totaling \$2,500, to continue "doing stuff for the [E]state." (Tr. p. 75). The AT&T invoices were set up as recurring withdrawal transactions and Taylor admitted that she "was not watching the account close enough by no means." (Tr. p. 76). Taylor "took full responsibility for being irresponsible with that." (Tr. p. 77).

[14] Turning to the Guardianship case, Taylor testified that she had omitted to petition the trial court for approval to spend funds to make repairs to Hayes' home prior to renovating. She paid herself for taking care of Hayes without petitioning the court prior to expending the funds. Taylor purchased a printer for \$700 for Hayes' benefit but could not produce a receipt for it, nor could the printer be located in Hayes' residence. The Hills allowed the homeowner's insurance on Hayes' residence to lapse. When Hayes' basement flooded due to a water leak, the insurance claim was denied, and he had to replace the flooring with his own funds.

[15] After the presentation of evidence, the trial court took the matter under advisement. On June 23, 2023, PFS filed supplemental exhibits, including two

quotes for new carpeting and flooring in Hayes' residence and a verified affidavit for attorney fees and litigation costs for Hayes' attorney in the amount of \$14,850 for fees incurred in the Estate and Guardianship cases.

[16] On July 7, 2023, the trial court entered findings of fact and conclusions thereon in the Estate matter. In its Order, the trial court found that the Hills had breached their fiduciary duties as personal representatives of the Estate and had wasted its assets, in pertinent part, by living at Sierra's residence rent-free, by failing to timely terminate utility services, by driving Sierra's vehicles without paying their rental value and charging the Estate for car insurance, by charging \$2,500 to the Estate for cleaning supplies, pet supplies, and other retail expenses without explaining how the disbursement benefitted the Estate, and by failing to pay the real estate taxes. The trial court further calculated that the Estate incurred additional expenses to clean up Sierra's residence and to file the personal tax return. All these expenses, plus the fair market value of rent that should have been paid by Taylor, totaled \$12,513.34. The trial court entered judgment against the Hills, jointly and severally, in the amount of \$19,938.34, of which \$7,425 represented attorney fees incurred by Hayes to have the Hills removed as personal representatives.

[17] In the Guardianship matter, the trial court found that the Hills, as co-guardians, never asked for assistance of the court when they became overwhelmed. The court concluded that they had breached their duties as Hayes' guardians by failing to make timely mortgage payments resulting in late fees, by allowing Hayes' homeowners insurance to lapse resulting in out-of-pocket repairs, by

paying Taylor to care for Hayes without the court's approval, for withdrawing funds from the checking account without proper explanation, for paying for hay for horses Hayes no longer owned, and for buying a \$700 printer. Additionally, the court found that Hayes incurred attorney fees to seek the removal of the Hills as guardians in the amount of \$7,425. The trial court entered judgment against the Hills, jointly and severally, in the amount of \$17,045.49.

[18] The Hills now appeal. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[19] In this case, the trial court *sua sponte* entered findings of fact and conclusions of law. When the trial court enters such findings *sua sponte*, the specific findings control only as to the issues they cover, while a general judgment standard applies to any issues upon which the court has not found. *Harris v. Harris*, 800 N.E.2d 930, 934 (Ind. Ct. App. 2003), *trans. denied*. Therefore, in reviewing this judgment, we must apply a two-tiered standard. *Id.* at 934-35. First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. *Id.* In deference to the trial court's proximity to the issues, we will reverse a judgment only when it is shown to be clearly erroneous, "*i.e.*, when the judgment is unsupported by the findings of fact and conclusions entered on the findings." *Id.*; *Scoleri v. Scoleri*, 766 N.E.2d 1211, 1215 (Ind. Ct. App. 2002).

[20] For findings of fact to be clearly erroneous, the record must lack probative evidence or reasonable inferences from the evidence to support them. *Scoleri*, 766 N.E.2d at 1215. In determining the validity of the findings or judgment, we consider only the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom, and we will not reweigh the evidence or assess the credibility of witnesses. *Id.* However, even though we defer substantially to the trial court’s findings of fact, we do not do so as to its conclusions of law. *Harris*, 800 N.E.2d at 935. Rather, we evaluate questions of law *de novo* and owe no deference to a trial court’s determinations of such questions. *Id.*

[21] First, we address the Hills’ argument that PFS’s objections to the Hills’ final accounting in the Estate case and the Guardianship matter were filed untimely and therefore PFS “waived its right to object.” (Appellants’ Br. p. 23). However, the Hills never raised this argument during either the March 27, 2023 hearing or the May 24, 2023 hearing. At no time during those hearings did the Hills state or suggest that they were at a disadvantage because PFS filed its objections in December 2022. A party waives appellate review of an issue or argument unless the issue or argument was raised before the trial court. *Richardson v. Thieme*, 76 N.E.3d 892, 900 (Ind. Ct. App. 2017). By failing to raise this issue before the trial court, the Hills waived appellate review of their claim. *Id.*

II. *Accounting in the Estate Case*

[22] Turning to the merits of the Hills’ claims in the Estate case, we note that “[u]nder the Indiana Probate Code, a personal representative is responsible for collecting and preserving all assets of the decedent’s estate.” *In re Bender*, 844 N.E.2d 170, 178 (Ind. Ct. App. 2006). “[A] personal representative of an estate is regarded as a trustee appointed by law for the benefit of and the protection of creditors and distributees of that estate.” *Id.* “There is a thread which runs through the law governing fiduciary relationships which forbids a person standing in a fiduciary capacity to another from profiting by dealing in the property of his beneficiary, and any such profit realized must be disgorged in favor of that beneficiary.” *Fall v. Miller*, 462 N.E.2d 1059, 1061 (Ind. Ct. App. 1984).

Every personal representative shall be liable for any loss to the estate arising from his neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property of the estate; for neglect in paying over money or delivering property of the estate he shall have in his hands; for failure to account for or to close the estate within the time provided by this article; for any loss to the estate arising from his embezzlement or commingling of the assets of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate arising from wrongful acts or omissions of his co-representatives which he could have prevented by the exercise of ordinary care; *and for any other negligent or willful act or nonfeasance in his administration of the estate by which loss to the estate arises.*

Ind. Code § 29-1-16-1(c) (emphasis added). Upon the filing of a personal representative’s account of the decedent’s estate, “a hearing and notice thereof

shall be had.” I.C. § 29-1-16-6. “At any time prior to the hearing on an account of a personal representative, any interested person may file written objections to any item or omission in the account. All such objections shall be specific and shall indicate the modification desired.” I.C. § 29-1-16-7.

Upon the approval of the account of a personal representative, the personal representative and his sureties shall, subject to the right of appeal and to the power of the court to vacate its final orders, be relieved from liability for the administration of his trust during the accounting period, including the investment of the assets of the estate. *The court may disapprove the account in whole or in part and surcharge the personal representative for any loss caused by any breach of duty.*

I.C. § 29-1-16-8 (emphasis added).

[23] First, the Hills contend that the trial court erred by imposing liability for actions that Hayes consented to, including the use of Sierra’s vehicle that was used for transporting Hayes to doctor appointments and testing, Taylor temporarily residing in Sierra’s residence rent-free, and the costs incurred for cleaning and repairing Sierra’s residence. In support of these contentions, the Hills point to Taylor’s self-serving testimony; Hayes did not testify. However, when the Hills incurred these expenditures, Hayes had been determined to be incapacitated and had been placed under a guardianship. He therefore could not ratify the Hills’ acts of self-dealing. *See In re Bender*, 844 N.E. 2d at 180 n.10 (Personal representatives are prevented from self-dealing, which is “dealing by the personal representative for his own benefit.”).

[24] As an additional argument, the Hills maintain that “it was not unreasonable for Taylor not to pay rent especially due to the care-taking responsibilities she was providing [to Hayes], and because she helped maintain [Sierra’s] residence and provide labor at [Sierra’s] residence related to repairing and cleaning the home.” (Appellants’ Br. p. 24). However, the Hills conflate Taylor’s responsibilities as a personal representative in Sierra’s Estate with her care-taking responsibilities of Hayes in the Guardianship matter. With respect to the maintenance, cleaning, and repairing of Sierra’s residence, the Hills fail to explain the benefits of these costs to the Estate. Rather, the Hills left the residence in such a condition that required PFS, as successor representative of the Estate, to employ an outside agency to clean the residence.

[25] The Hills’ arguments on appeal merely amount to requests to reweigh the evidence and reassess witness credibility, which we decline to do. *See Scoleri*, 766 N.E.2d at 1215. In ordering the Hills to reimburse the Estate \$12,513.34 (exclusive of attorney fees) for costs incurred due to the Hills’ breach of their fiduciary duty and negligence, the trial court considered the evidence submitted and the testimony received during two days of hearings. Based on the evidence presented, we conclude that the trial court’s judgment is supported by the findings of fact and the conclusions entered on the findings.

III. *Accounting in the Guardianship Case*

[26] Indiana law allows for the appointment of a guardian to act in the best interest of a person who is unable to care for himself or for his property. *See* I.C. Ch.

29-3-1 to -13. In general, the guardian has power to conduct the protected person's affairs. I.C. § 29-3-8-2. Further, under Indiana Code section 29-3-8-4, a guardian may exercise all powers required to perform their responsibilities, including powers conferred upon personal representatives by Indiana Code section 29-1-7.5-3. As such, a guardian is "a person who is a fiduciary . . . responsible as the court may direct for the person or the property of an incapacitated person[.]" I.C. § 29-3-1-6. "[A] guardian has a statutory duty to manage the estate for the ward's best interest" and is "responsible for the incapacitated person's care and custody and for the preservation of the incapacitated person's property[.]" I.C. § 29-3-8-1(b); *Wells v. Guardianship of Wells*, 731 N.E.2d 1047, 1051-52 (Ind. Ct. App. 2000), *trans. denied*.

[27] The Hills now contend that the trial court erred when it determined that they breached their statutory duties as guardians of Hayes' person and estate and required them to reimburse Hayes in the amount of \$4,348.35 for damages on Hayes' residence due to their failure to pay the homeowner's insurance premium and damages in the amount of \$2,530 for care-related services charged by Taylor to the Guardianship estate.

[28] While the Hills do not dispute that the damages to Hayes' residence were caused due to their failure to pay the homeowner's insurance premium, they contend that the amount of the damages is speculative. To support the damage amount, Hayes submitted two different quotes to replace the carpet and carpet pad. Although no evidence was presented that the work was performed and the amount was actually paid, the trial court included the lesser of the two quotes in

its judgment. As the quoted cost of these damages represents evidence of the value of that loss, we conclude that the award is based on an ascertainable calculation and is not speculative. The trial court properly included the quoted cost as damages in its judgment. *See* I.C. § 29-3-11-2(c).

[29] With respect to the care-related services performed by Taylor and charged to the Guardianship estate, the Hills claim that this amount was reasonable given the time and care Taylor gave to Hayes. We recognize that in general, “[w]here one accepts valuable services from another the law implies a promise to pay for them.” *Estate of Prickett v. Womersley*, 905 N.E.2d 1008, 1012 (Ind. 2009). This principle appropriately applies to general creditors. *Id.* “However, where the parties are family members living together, and the services are rendered in the family context, no implication of a promise to pay by the recipient arises.” *Id.* Instead, in these circumstances, the rebuttable presumption is that services are gratuitous. *Id.* The public policy advanced by this presumption is that family members “have reciprocal, natural, and moral duties to support and care for each other.” *Cole v. Cole*, 517 N.E.2d 1248, 1250 (Ind. Ct. App. 1988). Here, the Hills did not present any evidence to rebut the presumption that Taylor’s care to her father was rendered gratuitously. Therefore, the trial court did not err by including the amount paid to Taylor for care-taking services in the judgment.

[30] Based on the evidence before us, we find that the trial court properly entered judgment against the Hills and in favor of Hayes in the Guardianship case.

IV. *Attorney Fees*

[31] As a final argument, the Hills contend that the trial court abused its discretion in awarding attorney fees in the Estate and Guardianship matters. Indiana generally adheres to the American rule that a party must pay his own attorney fees absent an agreement between the parties, a statute, or other rule to the contrary. *Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453, 458 (Ind. 2012). However, “[i]f not otherwise compensated for services rendered, any guardian, attorney, physician, or other person whose services are provided in good faith and are beneficial to the protected person or the protected person’s property is entitled to reasonable compensation and reimbursement for reasonable expenditures made on behalf of the protected person. These amounts may be paid from the property of the protected person as ordered by the court.” I.C. § 29-3-4-4. Likewise, attorney fees are available for a fiduciary’s wrongdoing in an estate, and such fees should be paid by the fiduciary personally. *In re Bender*, 844 N.E.2d at 185 (concluding that as a matter of deterrence, equity demands that the fiduciary personally pay for attorney fees incurred to prevent him from acting outside his own fiduciary powers). When determining the value of services rendered by a personal representative or attorney, the trial court may consider many factors, including the labor performed, the nature of the estate, the difficulties encountered in recovering assets and locating heirs, settlements in the estate, the peculiar qualifications of the administrator, his or her faithfulness and care, and all other factors necessary to aid the court in a consideration fair to the estate and reasonable for the personal representative

and attorneys. *Estate of Clark v. Foster & Good Funeral Home, Inc.*, 568 N.E.2d 1098, 1101 (Ind. Ct. App. 1991). The determination of a reasonable fee lies within the sound discretion of the trial court and will not be overturned absent an abuse of discretion. *Id.*

[32] At the conclusion of the May 24, 2023 hearing, the trial court took the presented evidence under advisement and asked Hayes' counsel to submit her exhibit for attorney fees. On June 23, 2023, counsel filed a verified affidavit for attorney fees and litigation costs in the amount of \$14,850 for fees incurred for both matters, affirming that “[m]any activities for the two matters were combined. [Counsel] estimates that one half of the total fees and costs are attributable to each of the two matters.” (Appellee’s App. Vol. II, p. 171). Without conducting a hearing on the attorney fees, in its Orders, the trial court divided the total amount of the attorney fees, awarding \$7,425 to each of the Estate and Guardianship matters.

[33] The Hills now contest the amount of attorney fees as being unreasonable. We agree. Counsel’s affidavit on the attorney fees merely included a lump sum amount, with a second page showing a summary of total hours billed for two attorneys and three paralegals. As there was no hearing and no itemization of the “Litigation Fees and Expenses,” the Hills had no opportunity to question the work related to the amount, whether all these fees were incurred due to the Hills’ negligence in their administration of the Estate and Guardianship, or whether these were incurred from matters unrelated to their fiduciary breaches. (Appellee’s App. Vol. II, p. 172). Moreover, the trial court awarded \$7,425

attorney fees on a \$12,513.34 judgment in the Estate case and \$7,425 attorney fees on a \$9,620.49 judgment in the Guardianship proceeding. Combined, these fees represent approximately forty percent of the total judgment that was imposed on the Hills. As we assess the reasonableness of attorney fees in light of “counsel’s hourly rate, the difficulty of the issues involved, and the result achieved in the litigation,” we conclude that the trial court abused its discretion and remand to the trial court for a determination of reasonable attorney fees. *Davis v. Davis*, 889 N.E.2d 374, 388 (Ind. Ct. App. 2008) (reversing the trial court’s award of attorney fees because the trial court made no attempt to analyze the reasonableness of the attorney fees in light of each attorney’s hourly rate, the result achieved in the litigation, and the difficulty of the issues involved).

CONCLUSION

[34] Based on the foregoing, we hold that the trial court properly entered judgment for breach of fiduciary duty in the Estate case but abused its discretion in awarding attorney fees. We also hold that the trial court properly entered judgment in the Guardianship case in favor of Hayes but abused its discretion by awarding attorney fees.

[35] Affirmed in part, reversed in part, and remanded for further proceedings.

Brown, J. and Foley, J. concur

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