

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000502-MR

JEAN ARTHUR

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JEAN CHENAULT LOGUE, JUDGE
ACTION NO. 10-CI-01260

RONNIE L. BAILEY, EXECUTOR FOR
MARY RUBY WATSON, DECEASED
AND EXECUTOR FOR
WELTON WATSON, DECEASED

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE, NICKELL AND TAYLOR, JUDGES.

NICKELL, JUDGE: Jean Arthur served as guardian for both her mother, Mary Ruby Watson (Ruby), and her stepfather, Welton Watson, from March 2008 until they passed away in November 2009. Arthur appeals a final judgment entered by the Madison Circuit Court dismissing her complaint against Ronnie L. Bailey,

executor of both estates. Bailey denied Arthur's request for reimbursement of \$15,041.17 she claimed she had paid for Ruby and Welton's care from her own money but for which she had not reimbursed herself in her capacity as guardian, and which she had omitted from both the periodic and final settlements filed with and approved by the Madison District Court. After a bench trial, the Circuit Court dismissed Arthur's claim for reimbursement, holding it was incurred while she was guardian and should have been resolved before the final settlement in the guardianship case was submitted to the District Court for approval and the surety discharged. After reviewing the briefs, law and record, we affirm.

FACTS

Arthur and Bailey are siblings with three other sisters. On March 7, 2008, Arthur was appointed Welton's guardian.¹ On March 27, 2008, Arthur was appointed Ruby's guardian. Both Welton and Ruby lived in Arthur's home during the guardianship which lasted until both Ruby and Welton died.² On or about December 2, 2009, Bailey was appointed executor of both decedents' estates.

In her capacity as guardian, Arthur filed *periodic* settlements for Ruby and Welton on May 11, 2009, and *final* settlements for each on January 27, 2010. Several expenses,³ for which Arthur expected reimbursement, were never claimed

¹ Another sister, Judy Means, had previously served as guardian for both Ruby and Welton.

² Ruby died November 7, 2009; Welton died November 16, 2009.

³ One-seventh of the household bills for Ruby and for Welton (seven people were living in Arthur's home while she served as guardian); moving van rental and checks; \$500.00 monthly rent for nineteen months; moving van gasoline, clothes dryer duct parts and rental house utilities; partial reimbursement for telephone and cable television service; and carpet replacement. Personal living expenses for both Ruby and Welton were listed on final settlements, but Arthur

during the guardianship and were not reflected in the settlements. As guardian, Arthur could have repaid herself for these items while she controlled the checkbooks for both Ruby and Welton. Guardians are allowed compensation for services rendered and necessary expenses *from the estate of the ward* under KRS⁴ 387.111.⁵ Had she done so, her siblings would have received notice of the claims and could have filed exceptions if they questioned the accuracy or legitimacy of the amounts. Thereafter, all expenses listed on the settlements, would have been reviewed by the District Court and approved or disallowed. By not listing the expenses, however, she deprived the heirs of the opportunity to contest Arthur's handling of Ruby's and Welton's affairs and denied the District Court a true and complete picture of her actions as guardian.

While the settlements Arthur filed listed some items⁶ with specificity, she waited until May 4, 2010—after the guardianship had been dissolved and the surety had been discharged on or about January 27, 2010, to present six new claims to Bailey. In his capacity as executor of both decedents' estates, he denied the claims. He did so primarily because the claims were unsupported by bills, receipts or other appropriate documentation—but also because there was no indication of

claims those listings were incomplete.

⁴ Kentucky Revised Statutes.

⁵ Additionally, KRS 387.760(2) allows guardians to be reasonably compensated for services and reimbursed for reasonable and necessary expenses which are to be “paid from the financial resources of the ward.”

⁶ For example, “Utilities/Phone/Cable” in the amount of \$210.85 and “Miscellaneous Expenses” in the amount of \$229.48.

how the amounts were paid, the date on which a bank account was closed, a perceived violation of orders from two judges, and a feeling Arthur was making her siblings pay for having visited their dying parents.⁷ Arthur's explanation for omitting these six items from the periodic and final settlements was: she had not discussed the proper procedure for claiming them with her attorney; even though she believed she had earned reimbursement, she felt guilty about requesting it; and, she wanted to make Ruby and Welton's money last as long as possible due to issues with her siblings—according to Arthur, her brother and three sisters feared she would receive something from Ruby and Welton for taking care of them. Importantly, she did not characterize the six claims as unknown amounts.

When Bailey denied the six claims, Arthur filed a civil complaint in circuit court alleging she was entitled to “reasonable compensation” under KRS 387.760 “for reasonable and necessary expenses incurred in the exercise of [her] assigned guardianship.” Bailey answered the complaint, alleging the claim was untimely as it was not filed within sixty days of disallowance as required by KRS 396.055(1), and Arthur had housed Ruby and Welton in her own home, in contravention of two court orders.

Thereafter, Bailey filed a motion for summary judgment asserting Arthur should not be allowed to offer proof in support of her claims under CR⁸

⁷ Three siblings testified Arthur tightly controlled visitation in her home, allowing visits to occur only between 2:00 p.m. and 4:00 p.m. on Saturday, and often having one of her daughters oversee the visit. This testimony was contrary to Arthur's testimony that her siblings could visit privately with Ruby and Welton simply by closing the door.

⁸ Kentucky Rules of Civil Procedure.

37.02; Arthur improperly housed Ruby and Welton in her home; and, the complaint was untimely filed. Arthur responded that discovery was being provided with the response; the order prohibiting Arthur from moving Ruby and Welton into her home was superceded by an order allowing Ruby and Welton to live in Arthur's home (as evidenced by a docket sheet); and, the complaint was timely filed because Bailey had sent the denial of the claim directly to Arthur rather than to Arthur's attorney as required by CR 5.05. The motion for summary judgment was denied.

The circuit court scheduled a bench trial on July 12, 2011. Arthur, Bailey, Means, and another sister, Nora Isley, testified. At the conclusion of the testimony, the court expressed concern that Arthur might be barred from seeking reimbursement if a final settlement is, as its name implies, final. The court also expressed concern that the heirs had not been notified of the current claims in time to object. Arthur's attorney stated required notice of the settlements had been sent and no one had ever objected, prompting the Circuit Court to explain by not listing the claims in either of the settlements, no one ever had a chance to contest them.

After submission of memoranda by both parties, the trial court issued a final judgment on February 13, 2012. The Circuit Court held a final settlement is a final judgment and the one Arthur submitted to the District Court should have listed *all* expenses she incurred as guardian. The Circuit Court went on to say Arthur's failure to mention her current claims in the final settlement, and her

failure to seek an amendment of the final settlement, prevented her from seeking reimbursement from the decedents' estates. It is from this final judgment that Arthur appeals and we affirm.

ANALYSIS

Arthur frames the issue on appeal as whether the Circuit Court erred in dismissing the claims due to *res judicata*, an affirmative defense Bailey did not plead in his answer. We disagree with Arthur's statement of the issue. But for Arthur's failure to reveal known claims in the periodic and final settlements, there would be no basis for this appeal. Thus, the principle of *res judicata* does not resolve this appeal.

From our review of the case, the sole issue on appeal is whether a guardian may file an original action in Circuit Court challenging an executor's denial of a claim against a ward's estate. The answer to that question is "No."

KRS 387.520 vests exclusive jurisdiction of guardianship matters in the District Court, stating specifically:

[t]he District Courts shall have exclusive jurisdiction over all proceedings involving a determination of partial disability or disability, the modification of orders, the appointment and removal of guardians and conservators, and *the management and settlement of their accounts*.

(Emphasis added). Similarly, KRS 24A.120 vests exclusive jurisdiction over probate matters—even those contested in an adversary proceeding—in District Court. *Karem v. Bryant*, 370 S.W.3d 867, 870 (Ky. 2012), makes clear,

[a]s there is no provision under KRS 387.520 for concurrent jurisdiction with the circuit court, the district courts have exclusive subject-matter jurisdiction over the management and settlement of guardianship accounts, even if such accounting would be adversarial in nature under KRS 24A.120(2).

(Footnote omitted).

Because exclusive jurisdiction rests in the District Court, the Madison Circuit Court could not provide Arthur the requested relief. While not stating it lacked jurisdiction to hear the matter, the Circuit Court hit all around the mark by noting:

[t]he Final Settlement of the District Court has the power and effect of a final judgment. Ms. Arthur did not request the District Court to amend the Final Settlement. Therefore, Ms. Arthur is precluded from collecting said expenses from the Estates of Mary Watson and Weldon (sic) Watson.

Thus, even though not precisely stating the right reason, the Circuit Court correctly dismissed the original action and achieved the right result. *See Commonwealth v. Fields*, 194 S.W.3d 255, 257 (Ky. 2006) (trial court affirmed where it reached right result albeit for wrong reason).

Here, there is no dispute Arthur was named guardian for both Ruby and Weldon and remained in that capacity until their deaths. Within sixty days of her appointment as guardian, she was required to file a “true and correct inventory of the ward’s real and personal property and other financial resources[.]” KRS 387.100(1). That inventory was to contain “any claims against the estate of the ward.” KRS 387.670(4) and 387.710. If Arthur became aware of the existence of

other property, she was required to “file a supplementary inventory thereof within sixty (60) days from the time of obtaining such knowledge.” KRS 387.100(1).

Once the original inventory was filed, thereafter, KRS 387.670 required her to file a report “at least annually[.]” Failure to file the required accounting or inventory is grounds for removal of a guardian by the District Court. KRS 387.090(4); *Mahan v. Steele*, 22 Ky. L. Rptr. 546, 58 S.W. 446, 448 (1900). The settlements Arthur filed did not list her unpaid claims. Therefore, the documents filed with the District Court were incomplete.

We are concerned with the way Arthur went about seeking reimbursement. By signing the notarized final settlement on January 27, 2010, and asking that her surety be discharged, she represented to the District Court all assets and all claims had been identified and reconciled and her work as guardian was done. Clearly, she knew that was not the truth because she testified she was aware of six personal claims for which she personally intended to seek reimbursement—but testified she hesitated in asserting them in an attempt to avoid family strife. As a result, her signature on the final settlement is tantamount to committing perjury and perpetrating a fraud upon the District Court. Based upon Arthur’s representations, the District Court released the surety and closed the guardianship case.

We make no comment on the legitimacy of Arthur’s claims, but hereby confirm the seriousness of accepting an appointment as a guardian, and the need for guardians to scrupulously comply with the statutory requirements of filing

an accurate, complete and timely inventory. Once known, Arthur should have listed her claims on the periodic and final settlements. For any claims that arose after the guardianship had ended, she should have filed an amended settlement with the District Court. By doing none of these things, she prevented the other heirs from contesting her claims and, ultimately, lost the opportunity to seek reimbursement for expenses she may have legitimately incurred.

For the aforementioned reasons, we affirm the Circuit Court's dismissal of Arthur's complaint against Bailey.

TAYLOR, JUDGE, CONCURS.

MOORE, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Brooks Stumbo
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BRIEF FOR APPELLEE:

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