STATE OF MICHIGAN

COURT OF APPEALS

In re Conservatorship of DOROTHY ALMA LAESSER.

ELLA McCLATCHEY, Conservator for DOROTHY ALMA LAESSER, PP,

Petitioner-Appellee,

v

JAN ELIZABETH STINSO,

Respondent-Appellant,

and

JON JAMES LAESSER,

Appellee.

UNPUBLISHED
December 26, 2013

No. 311681
Livingston Probate Court
LC No. 2003-006219-CA

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right the probate court's April 3, 2012, order approving petitioner's final accounting and assessing attorney fees and guardian ad litem (GAL) fees against respondent for making frivolous objections. Because the trial court's ruling was contrary to the applicable Michigan Court Rules, we conditionally reverse the allowance of the final accounting and remand for a hearing to address respondent's two objections raised orally at the April 3, 2012, hearing. Because the trial court provided no basis for a determination of whether its award of sanctions was in error, we also remand to the trial court directing it to make appropriate findings with respect to whether respondent's objections meet the definition of "frivolous."

On February 1, 2012, the conservator for Dorothy A. Laesser, a protected person, filed a petition to allow a final accounting. Respondent objected to the final accounting, the eighth annual accounting, and the seventh annual accounting by filing written objections on March 5, 2012. Respondent alleged that the conservator billed "automatically" in hour and hour-and-one-half increments without regard to the actual time spent working on certain tasks. Then, at the

April 3, 2012, hearing concerning the accountings, respondent's attorney orally asserted two new objections to the final accounting. First, he alleged that there was a conflict of interest in the matter because the guardian ad litem, who was an attorney, was also representing herself as the attorney for the conservator. Second, he asserted that the conservator had potentially mishandled $13,000. The trial court refused to hear arguments on the oral objections because they were not properly noticed to the court and petitioner. Furthermore, after hearing argument on the written objections, the trial court determined that the objections were frivolous and awarded petitioner attorney fees and guardian ad litem fees. Respondent filed a motion for reconsideration arguing that MCR 5.119(B) allows both oral and written objections. Respondent also argued that its orally amended objections were not frivolous. The trial court denied respondent's motion for reconsideration. This appeal followed.

Respondent first argues that the probate court acted contrary to the Michigan Court Rules by refusing to allow her to make oral objections at the April 3, 2012, hearing. We agree.

Interpretation of court rules is a question of law that is considered de novo on appeal. *In re Burnett Estate*, 300 Mich App 489, 494; 834 NW2d 93 (2013). The principles of statutory interpretation apply to the interpretation and application of court rules. *Haliw v City of Sterling Heights*, 471 Mich 700, 704-705; 691 NW2d 753 (2005). Accordingly, the interpretation of court rules begins with the language of the rules at issue. *Id*. "Court rules are to be interpreted to give effect to the intent of the Supreme Court, the drafter of the rules." *Vyletel-Rivard v Rivard*, 286 Mich App 13, 21; 777 NW2d 722 (2009). Clear language must be enforced as written. *Velez v Tuma*, 492 Mich 1, 16-17; 821 NW2d 432 (2012).

> The intent of the rule must be determined from an examination of the court rule itself and its place within the structure of the Michigan Court Rules as a whole. When interpreting a court rule or statute, we must be mindful of "the surrounding body of law into which the provision must be integrated . . . ." [*Haliw*, 471 Mich at 706, quoting *Green v Bock Laundry Machine Co*, 490 US 504, 528; 109 S Ct 1981; 104 L Ed 2d 557 (1989) (SCALIA, J., concurring).]

MCR 5.119(B) provides:

> An interested person may object to a pending petition orally at the hearing or by filing and serving a paper which conforms with MCR 5.113. The court may adjourn a hearing based on an oral objection and require that a proper written objection be filed and served.

The plain language of this rule allows objections to be either oral or written.

We recognize that a specific court rule controls over a related but more general court rule, see *In re Haley*, 476 Mich 180, 198; 720 NW2d 246 (2006), and that subchapter 5.400 of the Michigan Court Rules specifically governs proceedings in conservatorships. In declining to grant reconsideration to respondent, the trial court specifically relied upon MCR 5.409(C)(5), indicating that it, as the more specific provision applicable to conservator accounts, clearly favored the filing of written objections prior to any hearing to allow an account. MCR 5.409(C)(5) provides, in pertinent part:

> Contents. The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and (d), except that references to a personal representative shall be to a conservator.

In turn, MCR 5.310(C)(2)(c) provides:

> Contents. All accountings must be itemized . . . The accounting must include notice that (i) objections concerning the accounting must be brought to the court's attention by an interested person because the court does not normally review the accounting without an objection; (ii) interested persons have a right to review proofs of income and disbursements at a time reasonably convenient to the personal representative and the interested person; (iii) interested persons may object to all or part of an accounting by filing an objection with the court before allowance of the accounting; and (iv) if an objection is filed and not otherwise resolved, the court will hear and determine the objection.

The above subrule clearly addresses only what information the accounting must include, not the manner in which an objection must be raised. Both subrules are specifically headed with the word "Contents" and are thus intended merely to direct the preparer of the accounting of the necessary inclusions. Neither subrule mandates written objections, nor do they preclude oral objections.

To the extent MCR 5.310(C)(2)(c), could be interpreted to have any bearing on the manner of objections, we would note that the specific language states that the notice must state that "interested persons may object to all or part of an accounting by filing an objection with the court before allowance of the accounting." Noticeably absent from the above subrule, however, is a requirement that any written objections to the accounting be filed before *the hearing*. Rather, the interested person must be advised that he may object to the account by filing objections "before allowance of the accounting." The accounting would not be allowed until after the conclusion of a hearing, obviously, because the purpose of the hearing is to address any concerns regarding the accounting. And information could be brought out during the hearing that could form the basis for new objections. It could be argued, then, that to be consistent with the court rule, an objecting party could file written objections to an accounting with the trial court following the initial hearing, but before the accounting is allowed. At that point, the trial court would be required to resolve the objection pursuant to MCR 5.310(C)(2)(c)(iv). A much simpler and more time efficient way of resolution, however, would be to address objections at the time they arise, to the extent possible.

In this case, one of respondent's oral objections pertained to the accounting itself. She alleged that the conservator had potentially mishandled $13,000. At the hearing, the respondent stated that this was newly discovered information, obtained after the prior objections had been filed. At one point, respondent asserted that the conservator refused to provide her with documentation regarding the accountings. Respondent also indicated that she would be willing to amend her objections to include the new objections so that a proper evidentiary hearing could be held with respect to the same. While the guardian ad litem provided an explanation concerning the $13,000, the trial court did not comment on the explanation—indeed, it affirmatively stated that it would not address respondent's oral objection, and it did not allow respondent to file the objection in written form prior to allowing the accounting. While the trial

court was not required to adjourn the hearing in order to allow respondent to file a written objection, the objection was nevertheless brought to the court's attention and "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *In re Adams Estate*, 257 Mich App 230, 234; 667 NW2d 904 (2003), quoting *Mathews v Eldridge*, 424 US 319, 333; 96 S Ct 893; 47 L Ed 2d 18 (1976)(additional quotation marks and citations omitted). The court rules did not require that respondent file a written objection to the accounting prior to the hearing and the trial court abused its discretion in failing to address the objection in any manner prior to allowing the accounting.

The same holds true for respondent's second objection, that there was a conflict of interest in the matter because the guardian ad litem, who was an attorney, was also representing herself as the attorney for the conservator. This objection did not specifically concern the accounting such that even if MCR 5.310(C)(2)(c) were interpreted to require the filing of written objections, it would be inapplicable to respondent's second objection. Instead, MCR 5.119(B), which specifically allows for either written or oral objections, would be applicable. In any event, respondent objected that there was a potential conflict of interest in the matter, as the guardian ad litem, Ms. Hamilton, is an attorney who also represented herself to the respondent to be the attorney for the conservator. Again, the trial court declined to address this oral objection due to respondent's failure to file a written objection concerning it prior to the hearing. Because (1) this is a possible serious conflict of interest issue that needs to be addressed, (2) the court rules did not require the filing of written objections for this issue to be addressed, and (3) the trial court provided no other viable reason for failing to address this objection, remand is necessary so this matter may be properly resolved.

Respondent also argues that the trial court erred in awarding sanctions against her because her objections were not frivolous. A trial court's finding that an action was frivolous in violation of MCL 600.2591 is reviewed for clear error. See *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997).

MCL 600.2591 allows a trial court to assess costs and fees against a party that raises a frivolous claim or defense. An action is "frivolous" if one of the following conditions exists:

> (*i*) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (*ii*) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (*iii*) The party's legal position was devoid of arguable legal merit. [MCL 600.2591(3)(a).]

The trial court awarded sanctions on the basis of respondent's written objections to the seventh, eighth, and final accounts, stating, "I have reviewed those objections. And I am in agreement . . . [that] those objections are not only denied but they are determined by this Court to be frivolous, and an utter waste of this Court's time and the time of the attorneys to address this matter as well as a waste of estate assets. And I will assess attorney fees in a reasonable amount to the Petitioner and or her attorney." In denying respondent's motion for reconsideration, the

court found that that respondent's attorney admitted that she only made a further inquiry into the factual basis for the objections after they were filed and that respondent's attorney did not dispute petitioner's pre-hearing explanation that petitioner actually spent more time performing her duties as a conservator than was actually billed. These statements, however, do not adequately address the basis for awarding sanctions. The trial court did not find that respondent did not make *any* inquiry into the factual basis for her objections, just that she did not make *further* inquiry until after the objections were filed. And, that petitioner may have spent more time than actually billed does not negate the time billed for the specific activities challenged by respondent. Moreover, given the seriousness of the other objections that this Court is directing the trial court to consider on remand, this Court is not content to simply accept petitioner's claim of additional hours expended prior to resolution of the remaining issues on remand and will not ask respondent to do so.

In sum, the trial court did not find that respondent's primary purpose in filing the objections was to harass, embarrass, or injure petitioner, nor did it find that respondent had no reasonable basis to believe that the facts underlying her legal position were true or that respondent's position was devoid of legal merit. Instead, the trial court's award of sanctions was conclusory in nature and provides no basis for this court to determine whether the award was in error. Remand is thus appropriate to allow the trial court to make appropriate findings with respect to whether respondent's objections meet the statutory definition of "frivolous" and whether the award of sanctions thus remains suitable.

We conditionally reverse the allowance of the final accounting and remand for a hearing to address respondent's two objections raised orally at the April 3, 2013, hearing. We further remand for the trial court to make findings as to whether respondent's objections are "frivolous" as statutorily defined so as to support the award of sanctions. These issues must be resolved by the trial court within 56 days of the issuance of this opinion. We retain jurisdiction.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens