STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0302

In re the Guardianship and Conservatorship of: Olga Z. Chorolec.

Filed December 20, 2021
Affirmed
Segal, Chief Judge

Anoka County District Court
File No. 02-PR-16-532

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Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge; and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this appeal, appellant-objector challenges the district court's denial of her motion to strike respondent-conservator's partition action and approval of the third annual accounting of the conservatorship. Because the district court has subject-matter

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

jurisdiction over the partition action, any procedural defect in the partition-action complaint was at most harmless error, and because we discern no abuse of discretion by the district court in approving the third annual accounting of the conservatorship, we affirm.

FACTS

This case is part of an ongoing dispute between two sisters, appellant Helen Chorolec and respondent-conservator Lilly Chorolec, over the finances and care of their mother, Olga Z. Chorolec (mother), who is a person subject to conservatorship.[1] Mother is in her 90s and has not been able to independently manage her own affairs since at least 2016 when Lilly petitioned for the appointment of a guardian and conservator for mother. The district court granted the petition and initially appointed both sisters, Helen and Lilly, as co-guardians and appointed Lilly as the sole conservator. At the time of these appointments, Helen lived with mother in Columbia Heights in a house they own as tenants in common. Lilly lives out of state.

The sisters have been in conflict over mother's finances and care since the beginning of the guardianship and conservatorship proceeding (the conservatorship proceeding). In 2019, Lilly petitioned the district court to remove Helen as a co-guardian, alleging negligence and failure to perform guardianship duties. Four days after the petition was filed, Anoka County Social Services (the county) removed mother from the home she

[1] Mother is a party to this case but did not file a brief on appeal. Instead, mother's counsel filed a "position letter" endorsing "the position of the [c]onservator and the legal arguments made in her brief to this court." We note that there are also other ongoing issues in this conservatorship action that are not part of this appeal.

shared with Helen. The district court noted that "the home was deemed uninhabitable" because of hoarding, mother "had suffered caregiver neglect," and "there was a suggestion that [mother had] suffered emotional abuse." Lilly and Helen later resolved the guardianship dispute with an agreement that both would resign as co-guardians and that the district court would appoint an independent guardian. Lilly remained as conservator.

The day after the county removed mother from her home, Lilly traveled to Minnesota to make living and other arrangements for mother. Mother had been taken to the hospital and, when she was discharged, her home was still uninhabitable and no assisted-living facilities were immediately available. Thus, among other things, Lilly arranged for her and mother to stay with a family friend at a cost of $176 per day for lodging, meals, and other assistance. Lilly also bought various clothing, personal items, and medical devices for mother upon her release from the hospital because Helen had not yet allowed Lilly access to the house to retrieve those items for mother.

Eventually, Lilly secured housing for mother at an assisted-living facility. Lilly also arranged for a home healthcare provider, Gem Healthcare Services, to provide additional caregiver services for mother. These services included "exercise, an additional shower each week, companionship, stimulation, and other personal care." Gem Healthcare is owned by the independent guardian appointed by the district court.

Throughout the fall of 2019, Lilly spent more time in Minnesota to deal with the house and other conservator duties. Lilly stayed with and paid her sister-in-law for lodging. After obtaining access to the house, Lilly worked with the fire marshal to assess the home's condition and determine what needed to be done to bring it up to code. When sorting

through the "massive amounts of paperwork" lying in "mounds" around the house, Lilly discovered various assets, including an $8,207 check from an automobile insurance carrier payable to Helen, which is at issue in this appeal. Lilly also discovered that mother had been paying 100% of the property taxes, insurance, and utilities, even though Helen was obligated to pay half of those expenses.

On a day when Lilly was working in the house, Lilly was physically assaulted by Helen. Helen was convicted of assault for this incident, and Lilly obtained an order for protection (OFP) against Helen. Lilly incurred medical, court, legal, and travel expenses related to the assault.

Lilly submitted, for the district court's review, the third annual accounting of the conservatorship covering the period from mid-February 2019 to mid-February 2020. The accounting included the expenditures mentioned above. Helen objected to the annual accounting, arguing that many expenditures were excessive and not reasonably related to mother's care. The district court approved the third annual accounting. Helen then brought a motion for amended findings. The district court denied the majority of Helen's claims but granted several of the requested amendments.

The house, which mother and Helen own as tenants in common, is vacant. To help pay for mother's ongoing expenses, Lilly worked to sell mother's interest in the house.[2] The district court approved a sale of mother's one-half interest in the house to a third party,

[2] The district court found that mother's estate is being quickly depleted, a substantial part of mother's estate includes the home, and mother's ability to remain at her assisted-living facility "is being threatened by financial concerns."

but the sale fell through because of a dispute over the home's appraisals. Thus, Lilly filed and served a summons, complaint, and motion seeking the partition and sale of the house. The partition action was captioned with the same case caption and case file number as the conservatorship proceeding.

Helen moved to strike the partition action, arguing that the district court functioned as a probate court in the conservatorship proceeding and, as such, lacked subject-matter jurisdiction to preside over the partition action. Helen also claimed that the summons and complaint in the partition action were procedurally defective.

The district court denied the motion to strike, noting that, since the merger of the probate court with the district court in the early 1980s, there is no longer any distinction between the two courts. The district court also noted that Helen had failed to "articulate how a partition action within the probate file would violate her due process or curtail [her] opportunity to engage in the partition action." The district court emphasized that it would afford Helen "the same rights as she would [have] if the action were filed separately," and that "[a]llowing the matter to proceed as filed will aid in a swift and efficient resolution."

Helen now appeals the district court's denial of Helen's motion to strike the partition action and the court's approval of the third accounting of the conservatorship.

DECISION

I. The district court did not err in denying Helen's motion to strike the partition action.

Partition actions are governed by chapter 558 of the Minnesota Statutes. Minn. Stat. §§ 558.01–.32 (2020). Section 558.01 provides: "When two or more persons are interested,

as joint tenants or tenants in common, in real property . . . an action may be brought by one or more of such persons against the others for a partition . . . or for a sale" of the real property. Here Lilly, as conservator, personally served Helen and filed with the district court a summons and complaint for partition of the house. Rather than caption the partition action as an independent lawsuit, however, the partition action used the same caption and case filing number as the conservatorship proceeding. The partition action was thus assigned to the same judge who was presiding over the conservatorship proceeding.

Helen argues in this appeal that the district court erred by denying her motion to strike Lilly's partition action for two reasons. First, she argues that the conservatorship proceeding is a probate matter and the district court, acting as a probate court, lacks subject-matter jurisdiction to consider the partition action. And second, she argues that the partition action was procedurally defective. Questions concerning subject-matter jurisdiction and the application of procedural rules are subject to de novo review. *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 644 (Minn. 2019) (stating that subject-matter jurisdiction is reviewed de novo); *Poppler v. Wright Hennepin Coop. Elec. Ass'n*, 845 N.W.2d 168, 171 (Minn. 2014) (stating that interpretation and application of the Minnesota Rules of Civil Procedure are reviewed de novo). We address each argument below.

A. The district court has subject-matter jurisdiction over the partition action.

The core of Helen's argument about jurisdiction is that Helen's interest in the house constitutes a separate legal interest from mother's and that the court presiding over the conservatorship proceeding has no jurisdiction over Helen's ownership interest. In support

of her argument, Helen points to the subject-matter-jurisdiction section of the Minnesota Uniform Guardianship and Protective Proceedings Act (the act), Minn. Stat. § 524.5-101 to .5-502 (2020), and asserts that it only covers property that is wholly within the control of the conservatorship.[3] We conclude that this is too narrow a reading of the district court's authority.

In addressing this issue, we first note the evolution of the role of probate courts in Minnesota. Originally, district courts and probate courts were separate entities with separate jurisdiction. "But in the early 1980s, Minnesota's district courts and probate courts were 'consolidated,' or 'merged.'" *Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6, 12 (Minn. App. 2017) (citations omitted), *aff'd*, 913 N.W.2d 449 (Minn. 2018); *see also* Minn. Stat. § 484.011 (2020) ("The district court shall also be a probate court."); *In re Est. of Janecek*, 610 N.W.2d 638, 641 (Minn. 2000) (stating that probate courts have "been consolidated into district courts of general jurisdiction"). "As a result, 'there is no longer a separate probate court system in Minnesota.'" *Laymon*, 903 N.W.2d at 13 (quoting *In re Guardianship of Doyle*, 778 N.W.2d 342, 345 n.1 (Minn. App. 2010)). Since the merger, this court has held that "a statutory provision that a right may be enforced only in district court, not in probate court, is now meaningless. There is no district court which

[3] Lilly argues that Helen waived or is estopped from objecting to the district court's subject-matter jurisdiction. She argues that Helen voluntarily subjected herself to the district court's jurisdiction by raising a different issue about the house earlier in these proceedings. This argument fails because "[s]ubject matter jurisdiction cannot be conferred by consent of the parties, it cannot be waived, and it can be raised at any time in the proceeding." *Tischer v. Hous. & Redevelopment Auth. of Cambridge*, 693 N.W.2d 426, 430 (Minn. 2005).

is not also a probate court, and no distinction between the courts." *In re Est. of Mathews*, 558 N.W.2d 263, 265 (Minn. App. 1997), *rev. denied* (Minn. Mar. 20, 1997).

Helen acknowledges this history but argues that the act still limits the scope of the district court's subject-matter jurisdiction. Helen cites the language in Minn. Stat. § 524.5-106:

> This article applies to, and the court has jurisdiction over, guardianship and related proceedings for individuals domiciled or present in this state, protective proceedings for individuals domiciled in or having property located in this state, and property coming into the control of a guardian or conservator who is subject to the laws of this state.

Focusing on the phrase "property coming into the control of a guardian or conservator" in the above-quoted section, Helen argues that, because her interest in the house has never come under Lilly's control, the district court lacks subject-matter jurisdiction over the partition action. We are not persuaded.

Helen seeks to distinguish between a district court that has jurisdiction to preside over a conservatorship proceeding and a district court that has jurisdiction to preside over a partition action. As the cases cited above make clear, however, there is "no distinction between the [two] courts." *Id.*; *cf. In re RIJ Revocable Tr. Agreement Dated Mar. 16, 2006*, No. A13-1305, 2014 WL 684698, at *5 (Minn. App. Feb. 24, 2014) (cited for persuasive value and holding that "the 1982 integration of the probate court with the district court and the adoption of the Uniform Probate Code (UPC) . . . gives the district court concurrent jurisdiction over all actions to which an estate may be a party").

Here we have two actions, a conservatorship proceeding and a partition action, each governed by its own statute. And the partition action was commenced by the service and filing of a separate summons and complaint. If the two proceedings had been assigned to two different district court judges, but everything else remained the same, we presume no question concerning subject-matter jurisdiction would have been raised. It thus appears that the issue here is not really one of subject-matter jurisdiction, but is more akin to a dispute over judicial assignment.

Moreover, Helen's argument ignores the fact that the subject-matter-jurisdiction section of the act provides jurisdiction not just over guardianship matters, but to "related proceedings." Minn. Stat. § 524.5-106. And the partition action appears to qualify as a "related proceeding" under the subject-matter-jurisdiction section of the act because the partition action is factually intertwined with the conservatorship proceeding. Mother's half-interest in the house constitutes a substantial part of mother's estate and funds are needed to allow mother to continue to live in her assisted-living facility. We thus conclude that the district court has subject-matter jurisdiction over the partition action.

B. Any procedural defect in the summons and complaint for the partition action is harmless error.

Alternatively, Helen argues that, even if the district court has subject-matter jurisdiction, it should have granted the motion to strike because the partition action was not properly commenced. Here the parties agree that Helen was served with a summons and complaint containing the requisite elements to initiate a partition action. *See* Minn. Stat. §§ 558.02-.03. Helen's argument focuses, instead, on the fact that the summons and

complaint were captioned with the case caption and case filing number of the conservatorship proceeding. Helen argues that the partition action was thus defective because the partition statute requires the initiation of an independent action.

The partition statute requires the commencement of an action by service of a summons and complaint. Under the statute, "an action may be brought" for partition or sale of real property and includes sections specifying what must be included in both the summons and complaint for such an action. Minn. Stat. §§ 558.01-.03. Because the commencement of an action would, typically, entail a summons and complaint with a unique case caption and the assignment of a new case file number, the partition action was miscaptioned. We conclude, nevertheless, that the failure to caption the partition action as its own independent action with a new case filing number was at most a harmless error under the facts of this case.

An error is harmless if it "does not affect the substantial rights of the parties." Minn. R. Civ. P. 61. And here, the filing of the partition action within the conservatorship proceeding did not affect Helen's substantial rights. The partition action was served on Helen such that she was made a party to the suit with full rights to oppose partition of the house. Moreover, the district court expressly stated in its order that the court would accord Helen all rights as if the partition action had been properly captioned as an independent matter and that the court would apply the law applicable to a partition action.

For the first time at oral argument, Helen asserted that her substantial rights were affected because she was deprived of the opportunity to file a notice of removal of the judge as of right under Minn. R. Civ. P. 63.03. Any party can disqualify "a presiding judge

or judicial officer" once as a matter of right by filing a notice to remove. Minn. R. Civ. P. 63.03. A party loses the right to automatically remove a judge once that judge "has presided at a motion or any other proceeding of which the party had notice." *Id.* Helen argues that because the partition action was brought within an ongoing case, she lost the right to file a notice of removal. We note that this argument was not raised or considered by the district court and was not asserted in Helen's briefing to this court. We "generally will not address an argument raised for the first time at oral argument" and we decline to do so here. *In re Commitment of Froehlich*, 961 N.W.2d 248, 255 (Minn. App. 2021).

Even if we were to consider Helen's argument, we are not convinced that Helen would be in any different position. As noted above, the partition action is inevitably intertwined with the conservatorship proceeding. Indeed, the very reason for seeking the sale of the house was to provide funds needed for the housing and care of mother, the person subject to conservatorship. The partition action thus involved "common question[s] of law or fact" with the conservatorship proceeding and it would have been well within the district court's discretion to order the consolidation of the two proceedings under Minn. R.

Civ. P. 42.01.[4] Thus, even if the partition action had been properly captioned as a separate matter, the result may well have been the same with both cases assigned to the same judge.[5]

We thus discern no error by the district court in denying Helen's motion to strike the partition action.

II. The district court did not commit clear error in approving the third annual accounting with adjustments.

Helen next argues that the district court abused its discretion by approving certain items in the third annual accounting of the conservatorship. She claims that the district court erred by deciding that the proceeds of a check from an automobile insurance carrier should be divided equally between Helen and mother, approving payments to a healthcare company for added services for mother, and approving some of the expenses claimed by

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[4] Minn. R. Civ. P. 42.01 provides:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

And a district court may consolidate actions under Minn. R. Civ. P. 42.01 "upon motion of any party" or "on its own motion." *Simchuck v. Fullerton*, 216 N.W.2d 683, 687 (Minn. 1974).

[5] We note that in two unpublished decisions, which we cite for their persuasive reasoning, this court has rejected attempts to remove a referee and a district court judge after the case was consolidated with another pending case, even though notices of removal as of right were otherwise timely filed. *See In re Power of Att'y Granted by Taraldson*, No. A16-0822, 2016 WL 7438725, at *4 (Minn. App. Dec. 27, 2016), *rev. denied* (Minn. Mar. 14, 2017); *Micketts v. Johans*, No. C8-02-711, 2003 WL 1875553, at *6 (Minn. App. Apr. 15, 2003).

Lilly for attorney fees and for food, lodging, and travel expenses. Helen also claims that the district court erred when it stated at the hearing on Helen's motion for amended findings that any objection not orally argued at the hearing would be treated as waived.

"The primary purpose of conservatorship proceedings is not to resolve a controversy between parties but to protect that class of citizens who are incapable of fully protecting themselves." *In re Conservatorship of Smith*, 655 N.W.2d 814, 820 (Minn. App. 2003) (quotation omitted). Conservators (and courts) therefore have a duty to protect the assets of a person subject to conservatorship from being depleted. *In re Conservatorship of Moore*, 409 N.W.2d 14, 16-17 (Minn. App. 1987); *see also In re Weisberg's Est.*, 64 N.W.2d 370, 372 (Minn. 1954). To that end, the conservator must file an annual accounting of the estate detailing the estate's assets and expenditures. Minn. Stat. § 524.5-420(a)-(b). The district court must monitor the conservatorship and review and hold a hearing on the annual accountings. Minn. Stat. § 524.5-420(a), (h).

An "interested person" may object to the annual accounting as part of this process. Minn. Stat. §§ 524.5-420(e). The conservator has the burden of supporting any fee requests made in the accounting. *Doyle*, 778 N.W.2d at 351.

This court reviews orders on annual accounts for clear error. *See Moore*, 409 N.W.2d at 16-17. Determinations about the accounting—such as whether fees are necessary—are factual, and "[a] probate court's determination of factual questions will not be set aside unless clearly erroneous." *In re Conservatorship of W.R.L.*, 396 N.W.2d 705, 707 (Minn. App. 1986); *see also* Minn. R. Civ. P. 52.01. A district court's decision to

grant or deny a motion for amended findings is reviewed for abuse of discretion. *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 754 (Minn. App. 2019).

A. The Automobile Insurance Check

The first issue asserted by Helen is that the district court erred by determining that mother had a one-half interest in the $8,207 check from the automobile insurance carrier. The check, which was made out to Helen, was issued in 2016 to reimburse the value of a car following an accident. Helen claims she was the car's sole owner and is entitled to the entire check. The district court, however, found that "the totality of the evidence demonstrates that [Helen] and [mother] were joint owners of the vehicle," and that mother was therefore entitled to one-half of the check.

The evidence in the record supports the district court's findings. Helen herself testified that funds for the purchase of the car, along with insurance and upkeep, came from an account owned jointly by Helen and mother. The district court found that mother contributed greater amounts to the joint account than Helen and discounted Helen's testimony about the check as lacking in credibility. We defer to the district court's credibility determination. *See In re Conservatorship of Lundgaard*, 453 N.W.2d 58, 61 (Minn. App. 1990). The district court also noted that the car was used both to drive mother and for Helen's personal purposes. We thus discern no clear error in the court's determination that half of the insurance proceeds belong to mother's estate.

B. Attorney fees, Payments to Gem Healthcare, and Lilly's Food, Lodging, and Travel Expenses

Helen's next argument is a broad attack on various allegedly "exorbitant" fees in the third annual accounting. She asserts that the district court failed to consider "whether each expense inured to the benefit of the estate and was reasonably necessary to provide for the care, comfort, and demonstrated needs of the person subject to conservatorship."

In general, a district court may allow reimbursement or compensation for a conservator "[w]hen the court determines that a guardian or conservator has rendered necessary services or has incurred necessary expenses for the benefit of the person subject to guardianship or conservatorship." Minn. Stat. § 524.5-502(c); *see also* Minn. Stat. § 525.515(a) (2020) ("[A]n attorney performing services for the estate at the instance of the . . . conservator shall have such compensation therefor out of the estate as shall be just and reasonable.").

The first expense Helen challenges is the district court's allowance of $2,500 in attorney fees that Lilly incurred while seeking an OFP after Helen assaulted Lilly. Lilly testified that she sought the OFP on behalf of both herself and mother, but the OFP ultimately only protected Lilly. Helen argues that there "is no nexus between the order for protection, which solely benefits Lilly, and the demonstrated needs of the person subject to conservatorship." The district court disagreed. The district court found that Lilly was assaulted by Helen while Lilly was performing her conservator duties. The district court determined that the legal fees were reasonable and necessary expenses for Lilly to be able

to continue to perform duties for mother as the conservator, and we find no error in the district court's findings.

Next, Helen challenges the district court's allowance of Lilly's food, lodging, and travel expenses while she was in Minnesota performing conservator duties. Helen argues that these expenses were not all necessary for mother's care, and that Lilly could have avoided "certain travel expenses" by performing conservatorship duties from California. As noted by the district court, however, Helen does not point to any particular expenses that she considers unnecessary, nor does she identify any specific times when Lilly could have remained in California. The district court found that Lilly needed to be in Minnesota to arrange for mother's long-term care. The district court also found that the amount of the food and lodging payments was reasonable, and that Lilly required lodging while she was performing conservator duties in Minnesota.[6] Given Lilly's extensive testimony regarding her conservator duties in Minnesota, allowing these travel expenses was not clearly erroneous.

Finally, Helen challenges the district court's allowance of $3,200 in fees to Gem Healthcare for supplemental caregiver services provided to mother. Helen does not challenge the need for the services but argues, for the first time on appeal, that it was improper for the guardian to contract with her own business to provide the services.[7] This court generally does not decide issues that were not raised and considered in the district

[6] We note that the district court did disallow a portion of the lodging payment as duplicative, but that portion is not at issue on appeal.

[7] The independent guardian appointed by the district court owns Gem Healthcare.

court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We therefore decline to consider this argument.

C. District Court Statement That Any Objection to the Accounting Not Argued Orally Would be Waived

Helen's final argument on appeal is that the district court abused its discretion by not considering all of her written objections to the third annual accounting. Helen included a list of her objections in her motion for amended findings and proposed order. Her memorandum of law in support of the motion provided legal analysis for some, but not all, of the proposed challenges listed in the motion. At oral argument on the motion, the district court stated:

> What else do you want to talk about today because you can address every single one of your paragraphs. I do not have an issue with that, but if you don't address it today I'm going to consider it to have been waived because I have questions on these, and I want to make sure I understand it fully. So I'm giving you the floor to bring up your next issue, but know if you don't raise it orally today, anything that you've done in writing that you don't address orally today I will have considered waived.

Helen's attorney did not object to the court's instruction during the hearing. But on appeal, citing Minn. R. Civ. P. 52.02 and Minn. R. Gen. Prac. 115.01, Helen argues that the district court abused its discretion "by disregarding, wholesale, arguments which were properly raised in motion papers and in the record before it."

Generally, a district court's decision regarding whether to grant or deny a motion for amended findings is reviewed for abuse of discretion. *Klingelhutz*, 927 N.W.2d at 754. As noted above, however, this court generally does not decide issues that were not raised

and considered in the district court. *Thiele*, 425 N.W.2d at 582. Even if this court were to reach the issue, it is unclear exactly what arguments the district court allegedly disregarded, because Helen's brief does not specifically identify them. In addition, Helen fails to demonstrate that any error by the district court was prejudicial. *See Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) ("Although error may exist, unless the error is prejudicial, no grounds exist for reversal."). We therefore reject the argument.

Affirmed.