STATE OF MINNESOTA
IN COURT OF APPEALS
A11-500

In the Matter of the Guardianship and Conservatorship of:
Harold F. Doyle, Ward.

Filed December 12, 2011
Affirmed
Worke, Judge

Aitkin County District Court
File No. 01-P5-04-000284

Thomas C. Pearson, Gammello, Qualley, Pearson & Mallak, PLLC, Baxter, Minnesota (for appellants Paul Peterson and H. Frances Peterson)

Denise Fischer, Duluth, Minnesota (pro se respondent)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellants served as guardians and conservators of the ward. Appellants challenged the district court's disallowance of certain fees as unnecessary and unreasonable. We reversed and remanded with instructions to the district court to allow appellants to challenge the policies that the district court relied on in determining the reasonableness of appellants' fees and, in its discretion, to reopen the record. Following remand, appellants now argue that the district court ignored evidence and abused its

discretion in disallowing certain expenses and fees and in requiring appellants to repay those amounts. We affirm.

FACTS

In July 2004, appellants Paul Peterson and H. Frances Peterson were appointed guardians of Harold F. Doyle and conservators of the estate of Doyle after the district court determined that Doyle was incapacitated due to his progressed age and erosion of his mental and physical capacities. In April 2008, the district court ordered appellants to show cause as to why fees charged to the estate were not excessive. Following a hearing, the district court, relying on Aitkin County Health and Human Services Service Fee Policy for Guardians and Conservators (policy) and the Minnesota Association for Guardianship and Conservatorship Standards of Practice (standards), determined that several of appellants' charges—their $50 hourly rate, their $250 monthly base fee, and their charge for a special-accounting—were excessive, unnecessary, and unreasonable.

Appellants challenged the district court's order disallowing certain fees, and we reversed and remanded with instructions to the district court to allow appellants an opportunity to challenge the persuasiveness of the policy and standards, and, in its discretion, to reopen the record. *See In re Guardianship of Doyle*, 778 N.W.2d 342, 350 (Minn. App. 2010). We further instructed the district court to apply a five-factor guide in determining just-and-reasonable fees. *See id.* at 351.

The district court held a hearing, but neither the policy nor the standards were admitted into the record, and the district court declined to take judicial notice of the policy and standards, finding neither to be "particularly helpful or overly persuasive." In

its original order, the district court, relying on the policy, determined that appellants could not charge more than $35 per hour. But on remand, the district court determined that the policy was merely persuasive and was not binding. After applying the just-and-reasonable test on remand, the district court determined that appellants could not charge more than $25 per hour. The district court further determined that appellants' $250 monthly flat fee charged for 21 months was unreasonable, excessive, and unnecessary because there was no reason why appellants could not have provided a detailed accounting for their five hours of recurring monthly tasks. The district court also disallowed appellants' special-accounting, and concluded that appellants must repay the estate $19,143.39.[1] This appeal followed.

D E C I S I O N

Appellants argue that the district court's findings and conclusions are not supported by the evidence and that the district court abused its discretion in disallowing certain expenses. The district court's findings will not be disturbed unless this court, after reviewing the evidence, "is left with the definite and firm conviction that a mistake has been committed." *In re Estate of Congdon*, 309 N.W.2d 261, 266 n.7 (Minn. 1981) (quotation omitted). A district court's decision as to the reasonable value of a conservator's or guardian's services is a question of fact that will not be set aside unless clearly erroneous. *In re Conservatorship of Mansur*, 367 N.W.2d 550, 552 (Minn. App. 1985), *review denied* (Minn. July 11, 1985).

[1] $5,250 ($250 monthly fee charged for 21 months) + $6,420.89 (excessive, unreasonable, and unnecessary billings) + $7,472.50 (special-accounting) = $19,143.39.

The district court applied the five-factor guide to determine whether appellants' fees were just and reasonable, considering: (1) the time and labor required; (2) appellants' experience and knowledge; (3) the complexity and novelty of problems involved; (4) the extent of the responsibilities assumed and the results obtained; and (5) the sufficiency of assets available to pay for the services. *See Doyle*, 778 N.W.2d at 351.

Time and labor

The district court determined that the matter was not time-intensive because appellants "spent no more on average than ten hours a week on this case." The district court also found that the matter was not labor-intensive because appellants performed accounting, made phone calls, visited Doyle, cleaned his home, sold his home, provided basic maintenance, and met Doyle's care providers.

A breakdown of the hours spent on this matter show that the district court's finding of "no more than ten hours a week" was based on the hours appellants billed in June 2007, which was by far the most time-intensive month. There were many months when appellants billed less than ten hours a month and many other months when appellants billed no hours. During 2006 appellants billed only 9.25 hours for the entire year. The record supports the district court's findings that this matter was neither time- nor labor-intensive.

Experience and knowledge

Appellants argue that they have extensive accounting backgrounds and educational experience. The district court found that appellants had "no experience or knowledge which is germane to their role as guardians/conservators." The district court

based this determination on the fact that appellants failed to provide support of their claimed employment positions and failed to show the value of their past employment to their roles. The district court also found that appellants' accountings were "fatally flawed" and "woefully out of order and inaccurate," which demonstrated their lack of expertise and professionalism.

At an earlier hearing in 2008, before the first appeal, H. Frances Peterson admitted that this was one of the first guardian/conservatorship matters appellants handled. Notwithstanding, on remand, appellants provided an exhibit showing their experiences and educations to demonstrate their experience and knowledge. Appellants both claimed: (1) three years as "manager" of "National Tax Firm's Accounting Office"; (2) nine years as "owner of a tax accounting office"; and (3) nine years "doing farm accounting." H. Frances Peterson also claimed to have spent five years as a "purchasing agent" for a window manufacturer and claimed to have two years of college education. Paul Peterson claimed to have twelve years of "tax reduction analysis and income enhancement experience"; training and experience in life insurance, long-term health care, and "asset conservation/preservation"; three college degrees; and law-school experience.

We agree with the district court that appellants provided only vague descriptions of their prior experiences and have failed to explain how their experiences are relevant to serving as guardians/conservators. First, it is questionable that appellants held the same titles for three different positions for the same number of years. Appellants also failed to describe the duties they performed at these tax offices, whether they performed accounting duties, and how their positions related to work performed as

guardians/conservators. Further, appellants failed to show the relevance of work as a purchasing agent of a window manufacturer to the duties of a guardian/conservator. Additionally, H. Frances Peterson failed to describe the classes she took during her two years of college. And Paul Peterson failed to define what "tax reduction analysis and income enhancement experience" means or how he gained that experience. He also failed to provide any details regarding his training and experience in life insurance, long-term health care, and asset conservation/preservation. Finally, Paul Peterson claimed to have three college degrees—an Associate of Arts degree in science, a Bachelor of Arts in history, and a Bachelor of Science degree in secondary education. Appellants assert that these degrees are relevant to the matter because they broadened Paul Peterson's perspective, helped him deal with people, and helped him understand people and situations. But, as the district court found, these general averments are not specific to the role of a guardian/conservator.

Thus, the district court's finding is supported by the evidence; the record simply does not establish that appellants had even moderate levels of experience or knowledge to appropriately handle this matter.

Complexity and novelty

Appellants argue that the matter was complex because Doyle had to be moved several times to different care facilities and the court administrator refused to accept their annual accounts, which resulted in them having to conduct a special-accounting. The district court determined that "[t]here is not a single difficulty marked with respect to Mr. Doyle." The district court stated that "[n]othing about this matter makes this case

inherently complex or novel, and any complexities that may have arisen were directly attributable to the inability of [appellants] to adequately carry out their functions as guardians/conservators."

The record shows that appellants moved Doyle several times, in part because they moved him to places that closed. Further, appellants failed to indicate what the moves entailed or how moving Doyle was complex; certainly it was not novel to have to move a ward to a different care facility. If anything, the moves would have contributed to the time and labor spent on this matter, but not the complexity or novelty of the matter.

Appellants argue that the matter was complex because the court administrator refused to accept their accounts but did not explain to them what was wrong with the accounts. Appellants claimed that they conducted a special-accounting because the court administrator claimed that their accountings were flawed. But, as the district court found, the ward should not bear the expense when a special-accounting is required because the guardians/conservators failed to initially perform their jobs correctly. And it does not contribute to the complexity of a matter when the guardians/conservators do not know how to do an accounting, which further indicates that appellants did not have the requisite experience or knowledge to handle this matter.

Thus, the district court's finding that this matter was not complex or novel is supported by the evidence. The record shows that appellants caused the flaws in the accountings which, in turn, resulted in a special-accounting; it is unreasonable to have the ward pay to fix something that appellants should have done correctly the first time.

Responsibilities assumed and results obtained

The district court determined that appellants "assumed substantial responsibilities," including disposing of property and caring for the ward personally. But the district court found that "the results obtained were unsatisfactory." This finding is supported by the record because appellants' billings were so flawed and caused additional expense in attempting to correct their mistakes.

Sufficiency of available assets

The district court determined that Doyle had sufficient assets to pay for appellants' services. The record supports this determination.

Based on the district court's consideration of the just-and-reasonable test, the court determined that appellants' reasonable hourly rate was $25. Appellants argue that the district court was required to adopt the $35-per-hour rate based on the remand instructions from this court. But that is an incorrect reading of this court's opinion. This court instructed the district court to, in its discretion, reopen the record. This court did not instruct the district court to use the $35-per-hour rate; rather, we instructed the court to analyze the matter using the five-factor guide, which it did. When the court conducted the analysis, it determined that $25 per hour was the appropriate rate. This determination was within the court's discretion based on: (1) this matter was not time- or labor-intensive; (2) appellants had essentially no experience or knowledge germane to serving as guardians/conservators; (3) this matter was not complex or novel; and (4) appellants assumed responsibilities of guardians/conservators, but obtained unsatisfactory results.

The district court further concluded that the monthly fee of $250 charged for 21 months was unreasonable, excessive, and unnecessary because appellants failed to explain what recurring monthly tasks were performed. The district court also noted that there was no reason why the tasks could not have been broken down and assessed at an hourly rate. This conclusion is also within the district court's discretion because appellants claimed that the flat fee covered five hours of work, but at $25 per hour, this would result in a $125 flat fee. Additionally, there were months when appellants billed their hourly rate for recurring tasks and also billed the monthly fee—essentially double billing.

The district court concluded that appellants billed excessive fees and that appellants must repay $19,143.39 to the estate. This conclusion, supported by the record, is within the district court's discretion.

Affirmed.