

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: MARGARET MAENE A/K/A  
MARGARET B. MAENE AN  
INCAPACITATED PERSON

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: SILVER LAKE CENTER, INC.,  
D/B/A/ SILVER LAKE CENTER

No. 909 EDA 2012

Appeal from the Order Entered March 9, 2012  
In the Court of Common Pleas of Bucks County  
Orphans' Court at No(s): 2009-0715

BEFORE: MUNDY, J., OTT, J., and PLATT, J.\*

MEMORANDUM BY OTT, J.:

**FILED MAY 23, 2013**

Silver Lake Center, Inc., d/b/a Silver Lake Center ("Silver Lake") appeals from the order entered on March 9, 2012 in the Court of Common Pleas of Bucks County, Orphans' Court Division that granted in part and denied in part the relief requested in its petition for a review hearing pursuant to 20 Pa.C.S. § 5512.2. On appeal, Silver Lake contends the orphans' court erred by refusing to direct the Guardian of the Estate to: 1) obtain court authorization prior to paying any third party non-medical or non-residential creditors; 2) pay Silver Lake \$791.00 per month prior to satisfying any other debts of the Estate; 3) pay Silver Lake \$3,600.00 from

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\* Retired Senior Judge assigned to the Superior Court.

the accumulated monthly resource income. For the following reasons, we affirm.

The orphans' court has ably recounted the procedural and factual history as follows:

Margaret Maene was born on or about December 23, 1923, and is an 88-year old resident of the Commonwealth of Pennsylvania. Maene, a widow, is afflicted by senile dementia with psychosis. On January 13, 2009, she was admitted to Silver Lake Center where she continues to reside.

Two weeks later, on January 27, 2009, Maene applied for Department of Public Welfare (hereinafter "DPW" or "Department"), Medical Assistance (hereinafter "MA") and Nursing Home Care ("NHC") benefits. She was deemed eligible for the aforementioned benefits by the Bucks County Assistance Office on or about November 3, 2009, with an effective date for benefits commencing March 1, 2009. In the Eligibility Notice (hereinafter occasionally referred to as "PA-162"), the DPW determined that the total monthly income payable to Maene was social security income in the amount of \$936.40, and that her monthly Payment Towards Cost of Care at a long term care facility was \$891.40.<sup>2</sup>

<sup>2</sup> After this Court appointed a Guardian of the Estate of Margaret Maene, DPW issued a new Eligibility Notice (PA-162), which determined Maene's total reported income to be \$936.00 per month and her payment towards cost of care to be \$791.00.

Pennsylvania Dep't of Pub. Welfare MA LTC Eligible Notice, Nov. 3, 2009 at 2. The "Payment Towards Cost of Care" is the amount the Commonwealth expects the resident to pay, on his or her own, to the nursing facility in order [sic] supplement the funds being paid by the government. N.T. 2/28/12 at 10.

On December 1, 2009, Silver Lake Center filed a Petition for the Appointment of a Guardian of an Incapacitated Person for Maene and a hearing was held on the petition on January 19, 2010.

On January 22, 2010, the Honorable Clyde W. Waite of this Court issued a Final Guardianship Decree in which Margaret Maene was adjudged to be a totally incapacitated person. Final Decree, at 1. This Court appointed Linda Bronisz, Margaret's daughter, as the Plenary Guardian of her mother's Person and Alan Pfunk of Pfunk Enterprises, Inc., d/b/a Comfort Keepers, as Plenary Guardian of Maene's Estate. Id. Judge Waite directed that the Guardian was not permitted to expend Estate principal without Court permission and that the Guardian of the Estate was to be paid a monthly stipend fee of \$150.00 for his services, \$100.00 of which was payable monthly from Estate income and \$50.00 payable monthly from Estate principal. Id. at 2.

On January 25, 2012, [Silver Lake] filed a "Petition for Citation Requesting a Review Hearing Pursuant to 20 Pa. Cons. Stat. §5512.2" and sought a Court Order regarding the "proper handling of the monthly resource income payable to the Incapacitated Person when the Incapacitated Person is deemed eligible for Department of Public Welfare, Medical Assistance, Long Term Care benefits." Petition for Citation, at 3. On February 28, 2012, this Court held a review hearing. At the review hearing, the testimony of Mark Newell, Esquire, senior counsel for DPW, and Alan Pfunk, Guardian of Maene's Estate, revealed the following:

According to Newell, the Department's position regarding the payment towards cost of care is "an expectation that those funds are going to be used to pay for the person's care" at the nursing home. N.T. 2/28/12 at 22. Once DPW makes an eligibility determination, it anticipates that amount of income would be paid to the nursing home by the resident. Id. Nevertheless, Newell conceded that "history tells us that the funds, again, are not sometimes paid over to the nursing home; and that issue, the payment of benefits to the nursing home, is a matter between the person in the nursing home and the nursing home itself." Id. at 22-23. Once DPW determines a person's eligibility, "if someone comes back to us and says to the Department, we're not getting the funds...[t]he Department's response to that is...[t]hey can certainly discharge someone who doesn't pay them the money that's owed to the home, or they can certainly proceed with a civil action against the individual and/or family member to try to recover those funds." Id. at 23-24. The Department does not revoke eligibility merely because

an individual is not making his or her payment to the nursing home. Id. at 25.

Pfunk testified that, as Guardian of Maene's Estate, he maintains Maene's account at Citizens Bank. Id. at 39. Maene's social security income is directly deposited into that account. Id. During his guardianship, Pfunk received \$18,411.76 of social security income on Maene's behalf. Id. at 42. Pfunk testified that he had expended some of Maene's income to address "things that [he] felt benefitted Mrs. Maene's welfare by protecting her assets." Id. at 40. Pfunk expended income to change the locks on Maene's house, pay guardian and bank fees, and pay property taxes for Maene's home. See, Id. at 42.

Specifically, Pfunk paid \$4,566.39 to prevent the tax sale of Maene's home that was scheduled to occur on December 31, 2011.<sup>3</sup> Id. at 56.

<sup>3</sup> Additionally, according to guardian's counsel, "there's multiple numbers that have to be kind of weeded through, mortgage amount, the actual amount of the underlying note that's still outstanding and then the actual amount that they are forced to take as settlement if we sell the house." Id. at 46-47.

Maene's home is located at 2909 Green Avenue, Bristol, Bucks County, Pennsylvania. Id. at 43. The property is listed for sale for \$180,000.00. Id. The property is subject to a reverse mortgage in the approximate amount of \$400,000; however, the Guardian's counsel represented that this amount does not reflect the actual balance of the underlying loan. Id. at 46. Mr. Pfunk testified that the proceeds from the house, if sold at \$180,000.00, "would settle the mortgage and put some money in Mrs. Maene's pocket." Id. at 45.

Instead of fully paying the contribution towards the cost of care to [Silver Lake], Pfunk "foresaw the budgetary expenses that needed to be paid, such as the property taxes protecting her property, and ...contributed \$6,000.00 from the account to pay for the facility." Id. at 50. Although Pfunk acknowledged that [Silver Lake] could terminate its long-term care of Maene, he did not "believe they would do that" and spent Maene's income on other obligations. Id. at 40.

On March 9, 2012, we entered an Order denying [Silver Lake's] requests that: (i) the Guardian of Maene's Estate file a Petition with the Court and obtain our authorization before paying third party non-medical or non-residential creditors from income, (ii) the Guardian of the Estate pay the long-term care facility the "payment towards the cost of care" designated by DPW prior to satisfying any other Estate debts, and (iii) the Guardian of the Estate pay \$3,600.00 from Maene's accumulated monthly resource income to [Silver Lake]. At the time Judge Waite's Guardianship Decree was entered, no principal had accrued from which to pay the guardianship fees, and, therefore, the Guardian was only permitted to take \$100.00 per month from income. See, N.T. 2/28/12 at 83. Based upon the record at the February 28, 2012 hearing, we determined the guardianship fees that had been taken were \$50.00 per month in excess of what the Guardianship Decree permitted from income. *Id.* at 89-90. In addition to the provisions [Silver Lake] presently challenges, our Order also directed that the Guardian of the Estate should take no further commission until his total commission fees were equivalent to the sum of \$100.00 per month for the duration of the guardianship. Thereafter, the Guardian shall receive a fee of \$100.00 from income, and no guardianship fee shall be taken from principal absent a Court Order. This timely appeal followed.

Orphans' Court Opinion, 7/3/2012 at 1-5.

Our standard of review is:

The findings of a judge of the orphans' court division, sitting without a jury, must be accorded the same weight and effect as the verdict of a jury, and will not be reversed by an appellate court in the absence of an abuse of discretion or a lack of evidentiary support.

The rule is particularly applicable to the findings of fact, which are predicated upon the credibility of the witnesses, whom the judge has had the opportunity to hear and observe, and upon the weight given to their testimony. In reviewing the Orphans' Court's findings, our task is to ensure that the record is free from legal error and to determine if the Orphans' Court's findings are supported by competent and adequate evidence and are not predicated upon capricious disbelief of competent and credible evidence. However, we are not limited when we review the legal

conclusions that [an] Orphans' Court has derived from those facts.

***In re Wilton***, 921 A.2d 509, 512 -513 (Pa. Super. 2007) (citations and quotations omitted).

In its first issue Silver Lake contends the orphans' court erred in failing to direct Guardian of the Estate to obtain court authorization prior to paying any third party non-medical or non-residential creditors.

The court correctly explained that authorization for payments was addressed in the guardianship decree entered on January 22, 2010. The court stated the decree "only proscribed the expending of principal without Court authorization." Orphans' Court Opinion, 7/3/2012 at 7. Further, "per the operation of Section 5536(a), permit[s] the Guardian of the Estate to utilize income for Maene's care and maintenance without this Court's approval." *Id.* The discretion to expend income is statutory:

All income received by a guardian of the estate of an incapacitated person, including (subject to the requirements of Federal law relating thereto) all funds received from the Veterans' Administration, Social Security Administration and other periodic retirement or disability payments under private or governmental plans, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the incapacitated person, without the necessity of court approval.

20 Pa. C.S. § 5536(a)<sup>1</sup>. Additionally, the orphans' court cited 20 Pa.C.S. § 5141 (possession of real and personal property by guardian of minor's estate) as incorporated by 20 Pa.C.S. § 5521(b) (duty of guardian of estate), which also grants a guardian of the estate discretion in expending income. We agree there is no statutory authority requiring a guardian of the estate to obtain court permission to make decisions for payments from income for the care and maintenance of the incapacitated person. This issue fails.

In its second issue, Silver Lake contends the orphans' court erred in failing to direct that \$791 of the monthly DPW payment, the amount determined to be the "payments towards cost of care", be paid to Silver Lake. The court refused to grant Silver Lake what it considered priority creditor status. The court again found "[t]he grant of [Silver Lake's] request to mandate that the Guardian pay [Silver Lake] the 'Payment Towards Cost of Care' before satisfying any other Estate debts would, in effect, be inappropriate in light of the statutory duties imposed upon a guardian and

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<sup>1</sup> We note the propose legislation to this section, 2013 Pennsylvania Senate Bill No. 117, Pennsylvania One Hundred Ninety-Seventh General Assembly – 2013-2014, changes the statute to permit the orphans' court to: 1) limit discretionary expenditures of income where the financial circumstances and needs of the incapacitated person require; and 2) for cause shown may authorize or direct the payment or application of any or all of the income or principal of the estate for the care, maintenance or education of the incapacitated person, spouse, children etc.

the grant of discretion to expend income in the exercise of those duties.” Orphans' Court Opinion, 7/3/2012 at 8.

Silver Lake disputes it is seeking priority over other creditors maintaining the calculation provides a specific amount to be spent for care. However, Silver Lake failed to produce any authority that the DPW “payment towards care” allotment must be used to pay for care of the payee. The testimony of Mark Newell, Esquire, senior counsel for DPW, further contradicts this position. Mr. Newell testified the monies determined “for care” were not dependent upon using them to pay the nursing home. N.T., 2/28/12 at 25.

We cannot conclude the court abused its discretion in declining to direct \$791.00 of Maene’s monthly DPW payments be directed to Silver Lake.

In its third issue, Silver Lake argues it is entitled to \$3,600 of the accumulated income in the Estate<sup>2</sup> for payment of services rendered. The orphans' court denied this request “because Silver Lake Center, in reality, is mounting a civil action for breach of contract concerning an unsecured and allegedly unpaid debt and we are unable to assert subject matter jurisdiction

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<sup>2</sup> We note according to the court appointed counsel for the Estate, Brenda A. Keith, Esquire, the total accumulated income was \$10,816.42.



over this particular dispute.” Orphans' Court Opinion, 7/3/2012 at 9. We disagree with the orphans' court's finding that it did not have jurisdiction.

Except as provided in section 712 (relating to nonmandatory exercise of jurisdiction through the orphans' court division) and section 713 (relating to special provisions for Philadelphia County), the jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division:

. . .

**(10) Incapacitated persons' estates.--**The administration and distribution of the real and personal property of the estates of incapacitated persons, except where jurisdiction thereof was acquired by the court of common pleas prior to January 1, 1969 unless the president judge of such court orders the jurisdiction of the estate to be exercised through the orphans' court division.

20 Pa.C.S. § 711(10). However, as discussed previously, because the Guardian of the Estate has discretion regarding the payments from income for the maintenance and care of the incapacitated person the failure of the court to direct payment of \$3,600 was not reversible error.

The Guardian of the Estate's testimony was that he did not believe Silver Lake would remove Maene from its facility for non-payment; however, Silver Lake may take such action. Here the guardian of the person is not also the guardian of the estate. In such a case, the guardian of the person, Linda Bronisz would be the proper party to petition the Orphans' Court for

payment of the nursing home bills if she determined the best interests of Margaret Maene would be served by remaining at Silver Lake.<sup>3</sup>

Accordingly we affirm.

Platt, J., concurs in the result.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetta", written over a horizontal line.

Prothonotary

Date: 5/23/2013

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<sup>3</sup> "(a) Duty of guardian of the person. – It shall be the duty of the guardian of the person to assert the rights and best interests of the incapacitated person. ..." 20 Pa.C.S. § 5521(a).