FILED
JAN 31, 2012

In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Matter of the Guardianship of:	)	**No. 26942-6-III (cons. with No. 28655-0-III)**
DORIS JEAN HOOGSTAD.	)	
	)	
JENON LAURENE,	)	
	)	**Division Three**
Appellant,	)	
	)	
v.	)	
	)	
LORI PETERSEN,	)	
	)	**UNPUBLISHED OPINION**
Respondent.	)	
	)	

Sweeney, J. — Guardianship matters still sound in equity despite extensive regulatory statutory schemes. Here, the court appointed a guardian for the person and estate of an elderly impaired woman and then approved the management of the estate by that guardian. The court's actions are easily supported in both fact and law and we affirm the orders of the trial court in all respects and award fees to the prevailing guardian.

FACTS

Doris Jean Hoogstad is an 85-year-old widow who suffers from dementia. She has

three grown children—two daughters and a son—and has lived most of her life in Creston, Washington. Her youngest daughter, Sherene L. Nelson, petitioned for the appointment of a guardian on May 7, 2007. That same day, the court appointed Lin D. O'Dell, a registered guardian ad litem, as the guardian ad litem for Ms. Hoogstad.

Ms. O'Dell filed a report on Ms. Hoogstad in July 2007. She concluded that Ms. Hoogstad suffered from mild to moderate dementia and required an outside professional guardian. Ms. O'Dell also expounded on her contacts with Jenon Laurene, Ms. Hoogstad's eldest daughter. Ms. Laurene apparently agreed that her mother needed a guardian, but asserted that she should be appointed. Ms. Laurene is a retired registered nurse. She lives on a disability pension in the Seattle area. Ms. Laurene insisted that having her mother live with her was a good arrangement for the entire family. Ms. O'Dell disagreed:

> I also recommend that Jenon not be appointed as Guardian for the Person and the Estate. I have been communicating with Jenon for some time via telephone or e-mail. She is extremely opinionated and very controlling. I believe that she will do anything to get her way. I also believe she does not distinguish her need from her mother's needs. Jenon is very efficient and does get things done, but cannot or will not believe or understand that Doris Jean has civil rights and even with a Guardianship, she remains an individual with certain rights.

Clerk's Papers (CP) at 802.

Ms. O'Dell supplemented her report in August 2007. She noted that Ms. Laurene and Ms. Hoogstad had signed a rental

agreement for a home in Renton, Washington, and that Ms. Hoogstad did not remember signing that agreement; and that:

> Before leaving Spokane, Jenon took her mother to the bank and switched the Safety Deposit Box into her name as well as Doris Jean's name. In the spring of 2006, there was $33,000.00 in this Safety Deposit Box. It was unknown how much money was left when the boxes were transferred.
>
> . . . .
>
> . . . I also believe that Doris Jean is being financially exploited by her daughter. I continue to recommend that an independent Guardian be appointed.

CP at 7-8.

The court held a hearing for the appointment of a guardian on August 15, 2007. Neither Ms. Laurene nor Ms. Hoogstad appeared at the hearing. The court appointed Lori Petersen, a professional guardian, as the guardian of Ms. Hoogstad's person and estate. Ms. Laurene moved for reconsideration of the order on August 30. The court denied that motion on November 15.

Ms. Petersen petitioned for, and the court entered, an order that approved a budget, disbursements, and an initial personal care plan on February 25, 2008. Ms. Petersen also petitioned for authority to sell Ms. Hoogstad's real property; it consisted of a mobile home on three acres in Creston, Washington. Ms. Laurene responded on March 7, with: (1) a motion for order conditioning sale, (2) a petition for orders to issue a citation

removing Ms. Petersen as guardian and appointing a successor guardian, (3) a response to petition for an order authorizing the sale of the real property, (4) a motion to condition the sale of the real property on a just appraisal, and (5) another motion to condition the sale on a just appraisal.

Ms. Laurene filed all of these pleadings again on March 10, 2008, along with: (1) a second motion regarding escrow upon sale; and (2) a response to and request to deny the petition for an order approving budget, disbursements, and initial care plan. The court entered an order on March 12, that denied all of Ms. Laurene's motions and approved the request to sell the real property after Ms. Laurene failed to appear at the hearing.

On March 17, 2008, Ms. Laurene moved the court to reconsider the order approving the sale of the real property and all of the earlier motions and of her petition to remove Ms. Petersen as guardian. She also moved to stay the sale of real property. Ms. Laurene then appealed all of the court's rulings on March 17.

Ms. Laurene requested that the trial court allow her to appear by telephone. Ms. Petersen objected. On April 10, 2008, the court again denied Ms. Laurene's motion for reconsideration and her motion to stay, because she failed to appear in person:

> I had a request for appearance by telephone by Ms. Laurene. I told her that she had to be here for this hearing. She set the hearing – for this date. I understand that under Rule 43 that I have discretion, but she has not showed up for previous hearings, and I wanted her here to testify, and to be cross examined. And I sent her a letter on top of that saying she had to be

> here. And as I understand it she acknowledged she got the letter; she requested another appearance by telephone, which I didn't respond to because I've already told her she had to be here.

Report of Proceedings (RP) (Apr. 10, 2008) at 27-28.

Ms. Laurene petitioned the Court of Appeals to stay the sale of Ms. Hoogstad's real property on April 20. A commissioner here denied the petition. Ms. Laurene then moved to modify the commissioner's ruling; that was denied on October 7. Ms. Laurene petitioned for, and was denied, review of the order by the Supreme Court on December 29, 2008.

Ms. Petersen later received an offer to purchase Ms. Hoogstad's real property and petitioned the court for an order directing the sale on April 22, 2009. Ms. Laurene requested that the court deny the petition. The court ordered the sale on May 8. The court confirmed the sale in June. Ms. Laurene then advised Ms. Petersen for the first time that Ms. Hoogstad had executed a quitclaim deed on July 26, 2007 quitclaiming the property to Ms. Laurene and reserving only a life estate. Ms. Hoogstad apparently signed the deed 20 days before the court appointed Ms. Petersen as guardian. The deed was not recorded, however, until June 11, 2009. As a result, Ms. Petersen could not transfer clear title. The property is currently being leased pursuant to an order entered by the court on September 24.

Ms. Laurene appealed "all" of the court's rulings. Ms. Petersen moved this court to determine which trial court orders, if any, were reviewable, as many were not timely appealed. We ruled that the only orders that were appealable were (1) the petition for orders to issue citation removing the guardian and appointing a successor guardian; (2) the response to the request to deny the petition for an order approving a budget, disbursements, and an initial care plan; and (3) the second motion regarding escrow upon sale.

In August 2009, Ms. Petersen moved for an order directing Ms. Laurene to return Ms. Hoogstad's car, a 2000 Pontiac Bonneville, so that it could be sold. Ms. Petersen confirmed with the Department of Licensing that Ms. Laurene had transferred title to herself. Ms. Petersen wanted the car sold because Ms. Hoogstad could no longer drive. The court had ordered that title be transferred back to Ms. Hoogstad in December 2008. Ms. Laurene responded that the car was the only means of transportation reasonably available to her and Ms. Hoogstad. The court held a hearing and then directed that the car be turned over to Ms. Petersen.

Ms. Laurene appealed that order to this court. She also moved the superior court to stay the order directing return of the car. Ms. Petersen responded that Ms. Laurene lacked standing to take any legal action on behalf of Ms. Hoogstad except through Ms.

Petersen, as her guardian.

The court heard argument on the motion in October 2009. During the hearing, Ms. Laurene disclosed that Ms. Hoogstad's Pontiac had been totaled in an accident in approximately June 2009 and she, Ms. Laurene, had used the insurance proceeds to buy a 2000 Honda Civic. The court entered findings, conclusions and an order denying Ms. Laurene's motion for stay:

> Ms. Laurene intentionally withheld this information [regarding the vehicle] from the Court at all levels, as well as counsel, and was maintaining motor vehicle insurance on an automobile which she did not own, and was not authorized to drive pursuant to the underlying Lincoln County guardianship action.
>
> . . . .
>
> . . . Ms. Laurene, who is unable to set forth any authority demonstrating standing or privity in this proceeding, continues to file pleadings and various actions with the Court purporting to act in the best interests of Ms. Hoogstad.

CP at 486-87 (Findings of Fact 2, 4). The court then barred Ms. Laurene from filing further motions or requests for relief from the court in the matter. Ms. Laurene also appealed that order.

DISCUSSION

Ms. Laurene appears in this matter pro se. Her brief is 75 pages long (not including the appendices), convoluted, and in many respects improper. *See* RAP 10.3, 10.7. She petitioned this court to accept her brief as presented because she (1) could not reduce the volume any further and (2) could

not figure out how to format a document with Microsoft Office 2007. A commissioner of this court accepted the brief, excluding any appendices not admitted by the superior court. Her essential complaints appear to be that the court should have appointed her not Ms. Petersen as guardian and that the court should not have approved the actions of the guardian to transfer Ms. Hoogstad's real property or her car. We do our best to answer those concerns.

Standing is a question of law that we review de novo. *In re Guardianship of Karan*, 110 Wn. App. 76, 81, 38 P.3d 396 (2002). Ms. Laurene contends that the court erroneously concluded that she lacked standing. She contends that her interests are inextricably intertwined with Ms. Hoogstad's. She claims that her mother currently speaks only through her. Ms. Petersen concedes that the interests of Ms. Laurene and Ms. Hoogstad are inextricably intertwined, although only because of the unauthorized and improper actions of Ms. Laurene. Ms. Petersen nevertheless contends that the court was justified in denying Ms. Laurene standing and prohibiting her from filing further pleadings in this matter in an effort to protect Ms. Hoogstad. RCW 11.96A.020.

Standing requires that a plaintiff have a personal stake in the outcome of a case in order to bring suit. *Gustafson v. Gustafson*, 47 Wn. App. 272, 276, 734 P.2d 949 (1987). "[T]he doctrine of standing prohibits a litigant from asserting another's legal right."

Miller v. U.S. Bank of Wash., N.A., 72 Wn. App. 416, 424, 865 P.2d 536 (1994). Family members of an incapacitated person who is under the protection of a guardian have the right, with cause, to apply for an order modifying a guardianship. RCW 11.88.120(2) ("any person").

The facts here help explain our response to Ms. Laurene's concerns. Ms. Laurene drove her mother from Spokane to the west side of the state some time after the petition for guardianship was filed in May 2007 and the appointment of a guardian ad litem. They inspected a home in Renton, Washington, and apparently signed a rental agreement. Ms. Hoogstad does not remember signing the agreement. Before leaving Spokane, Ms. Laurene took Ms. Hoogstad to the bank and switched her safety deposit box into Ms. Laurene's name, and removed some $30,000 in cash. Sometime later, Ms. Laurene also had Ms. Hoogstad transfer title to the 2000 Pontiac Bonneville into her name. Ms. Laurene also had Ms. Hoogstad deed her real property in Creston, Washington, to her.

Ms. Laurene and her mother's interests certainly are intertwined now. But that does not give Ms. Laurene standing to act on her mother's behalf. The court appointed a guardian ad litem in May 2007 and a professional guardian of person and estate in August 2007. Those guardians then had standing to act on behalf of Ms. Hoogstad. RCW 11.92.060.

Ms. Laurene, as the daughter of Ms. Hoogstad, had the right to petition for an order modifying a guardianship. RCW 11.88.120(2). She could challenge the guardianship but not the individual actions of the guardian.

Ms. Laurene contends that Ms. O'Dell, as guardian ad litem, improperly refused to consider her the guardian of her mother. She argues that she was a viable candidate for the appointment and that Ms. Hoogstad clearly wanted her appointed as guardian. Ms. Laurene contends that the court erred in appointing Lori Petersen because Ms. Petersen has continuously failed to carry out the fiduciary responsibilities of a guardian. She contends that Ms. Petersen has mismanaged the estate, misappropriated social security funds belonging to Ms. Hoogstad, and improperly acted to sell the real property against Ms. Hoogstad's wishes.

Ms. Petersen responds that Ms. Laurene's challenge to her appointment as guardian should be stricken as untimely. She notes that the court established the guardianship on August 15, 2007. Ms. Laurene moved for reconsideration on August 30. And the court entered the order dismissing Ms. Laurene's motion for reconsideration on November 15. Ms. Petersen contends that Ms. Laurene failed to appeal within 30 days of entry as required by RAP 5.2(a) or 5.2(c).

We review a superior court's order denying reconsideration for abuse of

discretion. *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002). Jurisdiction, however, is a question of law and so we review de novo whether the court has the authority to pass on the challenge. *Crosby v. Spokane County*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999).

A timely notice of appeal is a prerequisite to appellate jurisdiction. RAP 5.2; *In re Marriage of Maxfield*, 47 Wn. App. 699, 710, 737 P.2d 671 (1987). A notice of appeal must be filed within 30 days after entry of the trial court decision. RAP 5.2(a). If a notice of appeal is not filed "within 30 days of entry of an appealable order, the appellate court is without jurisdiction to consider it." *Maxfield*, 47 Wn. App. at 710.

Here Ms. Laurene failed to timely appeal the final order of guardianship entered on August 15, 2007. The notice of appeal was filed March 18, 2008, and sought review of "all of the decisions of the Superior court." CP at 129. Ms. Laurene moved for reconsideration of the August 15 guardianship order on August 30, andd the court denied that motion on November 15. Under RAP 5.2(a), Ms. Laurene had 30 days from that final denial to file her notice of appeal. Her March 18, 2008 filing comes too late. Accordingly, we do not have jurisdiction to pass on the propriety of the final order of guardianship.

Ms. Laurene also takes issue with the specific guardian appointed, Ms. Petersen.

She contends that Ms. Petersen has continuously failed to carry out her fiduciary responsibilities as guardian. She contends that Ms. Petersen has financially mismanaged the estate, misappropriated social security funds belonging to Ms. Hoogstad, and improperly acted to sell the real property against Ms. Hoogstad's wishes. Ms. Laurene wrote that Ms. Petersen "has been a vicious, abusive and corrupt guardian." CP at 684.

"'A fiduciary is a person with a duty to act primarily for the benefit of another.'" *Cummings v. Guardianship Servs. of Seattle*, 128 Wn. App. 742, 755 n.33, 110 P.3d 796 (2005) (quoting *Guarino v. Interactive Objects*, 122 Wn. App. 95, 128, 86 P.3d 1175 (2004)). The guardian of the person and estate of an incapacitated person owes a fiduciary duty to her ward. *In re Guardianship of Eisenberg*, 43 Wn. App. 761, 766, 719 P.2d 187 (1986). Among the various duties of a guardian is to conserve and protect the estate of the ward and act for the benefit of the ward when the ward's interests can be properly determined. RCW 11.92.040(5). Again, the family members of the ward have the right, with cause, to apply for an order modifying a guardianship. RCW 11.88.120(2).

Ms. Laurene petitioned to remove Ms. Petersen as guardian and for appointment of a successor guardian. She outlined a list of complaints about Ms. Petersen's handling of things. The court dismissed those motions when Ms. Laurene failed to appear. But,

regardless, Ms. Laurene makes no showing that Ms. Petersen has misappropriated funds or acted improperly. Her unsupported assertions of impropriety, without more, do not support a challenge to Ms. Petersen's appointment or her management of the estate.

We are without jurisdiction to address whether the court properly appointed a guardian for Ms. Hoogstad and there is no showing, in any event, to support the allegations that Ms. Petersen has acted improperly.

The management of the guardianship by the superior court is reviewed for abuse of discretion. RCW 11.92.010; *In re Guardianship of Johnson*, 112 Wn. App. 384, 387-88, 48 P.3d 1029 (2002). A court abuses its discretion when it acts on untenable grounds or for untenable reasons. *In re Marriage of Gillespie*, 89 Wn. App. 390, 398-99, 948 P.2d 1338 (1997).

Ms. Laurene contends that the superior court erred when it ordered her to sell her mother's real property because Ms. Hoogstad did not want the property sold. Ms. Laurene does not have standing to argue this issue on behalf of her mother. Again, regardless, the court did not abuse its discretion in ordering the property sold.

A guardian simply serves as the court's agent through which the court seeks to protect the ward's interest. *See* RCW 11.92.010; *In re Guardianship of Gaddis*, 12 Wn.2d 114, 123, 120 P.2d 849 (1942). The courts retain "full and ample power and

authority . . . to administer and settle . . . [a]ll matters concerning the estates and assets of incapacitated . . . persons." RCW 11.96A.020(1)(a). A court may "proceed with [estate] administration and settlement in any manner and way that to the court seems right and proper." RCW 11.96A.020(2).

Here, the real property had to be sold because Ms. Hoogstad's expenses of $1,700 per month exceeded her $1,000 per month income. The court found that Ms. Petersen had "followed the statutory requirements for placing the property for sale" and ordered the property placed for sale. Ms. Petersen received a reasonable offer to purchase the real property.

The court had tenable grounds and reasons, as presented by Ms. Petersen, for ordering the sale of real property. Ms. Laurene should not have been allowed to challenge the order.

Ms. Laurene has standing to challenge or modify the guardianship as a family member under RCW 11.88.120(2). Telephonic argument on civil motions, including family law motions, may be heard by conference call in the discretion of the court. CR 7(b)(5). The court also has discretion to permit witnesses to testify through a contemporaneous transmission to the court from an outside location. CR 43.

Here, the court denied Ms. Laurene's request to appear by phone. He told her

personally and sent her a letter that she had to attend the April 10, 2008 hearing. The judge noted that Ms. Laurene set the hearing and he wanted her there to testify and be cross-examined. Ms. Laurene had failed to appear at previous hearings. Ms. Laurene did not appear and the court struck her motions. The court had discretionary authority to do just that. CR 7(b)(5).

Ms. Laurene offers no support for her challenge to the court's order to sell Ms. Hoogstad's car. And, as we have already noted, she has no standing to challenge the sale. Regardless, the court found that Ms. Hoogstad was unable to drive and that there were other methods of transportation available to her. The court found that Ms. Laurene had replaced Ms. Hoogstad's original automobile without the court's or the guardian's knowledge. And the court further found that "Ms. Laurene is clearly using the replacement vehicle, a 2000 Honda Civic, primarily for her personal use. The file would reflect that Ms. Hoogstad is in her late 80's, is significantly demented and is unable to drive a motor vehicle." CP at 486.

The court had tenable grounds and reasons for ordering the sale of the car. Ms. Laurene should not have been allowed to challenge the order anyway.

We affirm the orders of the trial court.

Ms. Petersen requests fees on appeal pursuant to RCW 11.96A.150 and RAP 18.1.

She argues that the filings by Ms. Laurene, and her lack of candor to the court, the guardian, and counsel justify an award of fees. We agree and award Ms. Petersen fees on appeal.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

_____
Sweeney, J.

WE CONCUR:

_____ _____
Kulik, C.J. Korsmo, J.