STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2468

In re: Guardianship and Conservatorship of Gladys Brooks

Filed February 19, 2008
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-P9-03-002033

Stephen C. Fiebiger, Stephen C. Fiebiger & Associates, Chartered, Suite 190, 2500 West County Road 42, Burnsville, Minnesota 55337 (for respondent conservator)

Diane Montgomery, 1023 Mt. Curve Avenue, Minneapolis, Minnesota 55403 (pro se appellant)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Muehlberg, Judge.*

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

HUDSON, Judge

On appeal from an order allowing the amended first annual account of conservator, appellant argues that the district court erred because it (1) allowed an account that did not meet basic accounting standards; (2) overruled appellant's objections to the initial inventory, which was filed late and did not specifically describe and provide the value of the estate's property; and (3) did not properly monitor the conservatorship.

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

Appellant also contends that the district court abused its discretion when it maintained conservatee's in forma pauperis (IFP) status. The district court did not clearly err in allowing the amended account and amended inventory, and it properly monitored the conservatorship. Nor did the district court abuse its discretion in maintaining conservatee's IFP status. Accordingly, we affirm.

FACTS

In November 2003, appellant Diane Montgomery petitioned the district court to be appointed as guardian of her mother, Gladys Brook (conservatee). Appellant's siblings, John Brooks (Brooks) and Pamela Perraud (Perraud), objected to the appointment of appellant as guardian. Brooks and Perraud petitioned the district court to appoint a third-party neutral guardian and conservator, respondent Jean Sulzle.

After the district court appointed respondent as an emergency guardian in October and December 2004, appellant, Brooks, and Perraud (children) entered into an agreement with respondent to propose the appointment of respondent as guardian for conservatee. In February 2005, the district court appointed respondent as guardian and conservator of conservatee based on its finding that there was clear and convincing evidence that conservatee was incapacitated and needed a guardian to care for her person and a conservator to care for her estate.

In September 2005, respondent filed an initial inventory and appraisal (initial inventory) with the district court. The document, however, was signed and notarized in March 2005. In the initial inventory, respondent made a single inventory entry that conservatee owned $200 worth of "[n]ominal furniture and household goods."

In October 2005, respondent filed a notice to dispose of some of conservatee's personal property because conservatee was moving to a nursing home. Appellant objected to the initial inventory and the intent to dispose of personal property because it was "uninventoried and unappraised" and was filed five months after it was due. Appellant requested a detailed inventory of all personal property and an independent appraisal of "furniture, art, artifacts, three dimensional objects, papers, records and items of family value."

In response, respondent filed an affidavit stating that she intended to have conservatee assist her in the disposal of her personal property and that she would keep a detailed record of all disposed-of property. Respondent also asserted that an appraisal of conservatee's property would be "unnecessary and financially impractical" because the estate's limited funds were needed for conservatee's care and not an appraisal. In addition, respondent explained that while the initial inventory was completed on time, her attorney mistakenly filed it late.

In March 2006, respondent filed the first annual account (first account). The first account indicated that the estate's assets and income consisted of $27,688.13 and the estate incurred $19,935.85 in expenditures. The first account identified several entries for expenditures in broad categories, including an expenditure of $3,518.51 to reimburse Perraud and $365.06 for personal needs. Appellant filed objections to the first account because it lacked "detail and specificity to the level that they are understandable and transparent" and requested that respondent provide a detailed inventory of all of conservatee's personal property and financial documents to support the estate's

expenditures. At a hearing held in May 2006, the district court requested that respondent provide documentation for all expenditures on the first account of $100 or more, except the Perraud refund expenditure.

Following another hearing, respondent filed an amended first annual account (amended account) in July 2006. The amended account added $200 to the income-and-assets figure to reflect the stated value of the estate's property from the inventory. Respondent also filed an amended inventory and appraisal (amended inventory). The amended inventory still contained the stated-value amount of $200 in personal property but included several handwritten sheets listing the estate's personal property and pictures of the estate's artwork and furniture. Thereafter, respondent supplemented the amended inventory with another list of household furniture and goods at the request of the referee.

After a hearing in August 2006 at which respondent testified as to the disputed expenditures on the amended account and the amended inventory, the referee filed an order allowing the amended first annual account of conservator, which was entered by the district court in October 2006. The referee found that all of the expenditures in the amended account were appropriate and were made for the benefit of conservatee. The referee also concluded: "The objections to the Amended Inventory and to the Amended First Annual Account are without economic or practical significance, and should be overruled." This appeal follows.

D E C I S I O N

I

Appellant argues that the district court erred when it allowed the amended account because it lacked "transparency" and was based upon missing check documentation, ledger pages, descriptive documentation, and receipts. We disagree.

This court reviews a probate court's approval of a conservator's accounting and a probate court's factual findings for clear error. *In re Conservatorship of Moore*, 409 N.W.2d 14, 16–17 (Minn. App. 1987).

Under Minn. Stat. § 524.5-420(a) (2006), "[a] conservator shall report to the court for administration of the estate annually." The "report must state or contain a listing of the assets of the estate under the conservator's control and a listing of the receipts, disbursements, and distributions during the reporting period." Minn. Stat. § 524.5-420(b) (2006). "The court may appoint a visitor to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs." Minn. Stat. § 524.5-420(c) (2006).

Here, respondent's amended account complied with section 524.5-420. The amended account identified the estate's assets, monetary receipts, disbursements, and distributions. While appellant argues that respondent must provide proof of all disbursements or expenditures with the annual account, the statute does not mandate such supporting documentation.

Further, in accordance with section 524.5-420, respondent complied with the district court's request to provide additional documentation for certain disputed

expenditures. At the August 2006 hearing, respondent testified to the documentation she provided to support all expenditures over $100 from the amended account.[1] Appellant had the opportunity to cross-examine respondent about all of these expenditures and did not establish that any disputed expenditure was not made for the benefit of the estate or based upon insufficient documentation. After the hearing, the referee concluded:

> After a painstaking examination of statements, cancelled checks (or copies thereof), bank statements, and considering the testimony of [respondent], the court finds from a preponderance of the evidence that all of the expenses shown on the Amended First Annual Account were appropriate and for the benefit of the conservatee, and that [respondent] had established that payments therefor had been made.

Based on these findings, the referee held that the amended account was "finally settled and allowed." These findings are supported by the record and are not clearly erroneous.[2]

Appellant also contends that because respondent is a professional guardian/conservator, she should be held to a higher standard and be required to provide detailed accounting records. But appellant does not cite any authority for this

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[1] Appellant argues that it was improper for the district court to require that respondent only provide documentation for expenditures over $100 because the statute does not exclude any category from documentation. But section 524.5-420 does not require that annual accounts include supporting documentation. And, in accordance with section 524.5-420, when requested by the district court respondent provided supporting documentation for certain expenditures. Further, at the May 2006 hearing, appellant herself suggested that respondent provide documentation for expenditures over $100 to "simplif[y]" the process. The district court agreed with the suggestion.

[2] Appellant contends that no documentation was filed for the expenditure identified as a refund to Perraud on the amended account. But at the May 2006 hearing, the referee stated that appellant's objections to the Perraud expenditure were addressed by the court in prior proceedings. And at the August 2006 hearing, respondent explained that the expenditure was to repay Perraud for an advance she made on behalf of the estate to one of conservatee's residences and that the bills from the residence verified the amount Perraud paid on behalf of the estate for that period.

proposition, and section 524.5-420 does not hold any subset of conservators to a higher standard. Accordingly, the district court did not clearly err when it allowed the amended first annual account.

II

Appellant argues that the trial court should not have allowed respondent's initial inventory because it was filed late, it did not describe a quantity or a description of the goods owned by conservatee, and it identified property that was not appraised.

Under Minn. Stat. § 524.5-419(a) (2006): "Within 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits." Because a conservator is statutorily mandated to file an inventory, we review the probate court's allowance of an inventory and its factual findings for clear error. *See generally Moore*, 409 N.W.2d at 16–17 (holding that the district court clearly erred in allowing the annual account).

Appellant appears to argue that the district court erred in allowing the initial inventory because respondent did not comply with Minn. Stat. § 524.5-419. Appellant is correct that the initial inventory did not satisfy the requirements of section 524.5-419(a) because it was filed after the 60-day deadline and did not contain a detailed inventory of the estate. The record indicates, however, that the initial inventory was notarized within the 60-day deadline but that respondent's attorney mistakenly failed to forward the initial inventory to the court until months later. In addition, respondent filed a detailed amended

inventory to respond to appellant's objections to the initial inventory. The amended inventory included detailed lists of the estate's property. The referee found that while the amended inventory was "imperfect," it provided a detailed inventory of the estate's furniture, clothing, and artworks and accounted for all the items appellant claimed had monetary or sentimental value. Based on these findings, the referee concluded that appellant's objections to the amended inventory were "without economic or practical significance." These findings are supported by the record and are not clearly erroneous.

Finally, contrary to appellant's contention, section 524.5-419(a) does not require an appraisal or other valuation of all inventoried property.[3] Thus, the district court did not clearly err when it allowed the amended inventory without having the property appraised and accordingly did not clearly err when overruling appellant's objections to the amended inventory.

III

Appellant contends that the district court allowed respondent to file "incomplete and inaccurate accountings." Appellant then appears to suggest that the district court violated Minn. Stat. § 524.5-420(d) (2006) by not monitoring the conservatorship. To the

[3]While appellant cites to Minn. Stat. § 48A.07, subd. 6 (2006), to support her argument that a conservator must provide market valuations for inventoried property, this statute concerns trust companies acting as fiduciaries, not conservatorships. Further, even though the document filed by respondent contained "appraisal" in the title and provided space for the estimated value of the property, this document appears to have been produced under an older version of the conservatorship statutes. *See* Minn. Stat. § 525.561 (2002) (stating that conservator shall file an inventory stating the fair market value of all inventoried property).

extent that appellant argues that the district court erred in allowing the amended initial inventory and amended annual account, that argument is addressed above.

To the extent that appellant contends the district court did not fulfill its monitoring obligations under Minn. Stat. § 524.5-420(d), we conclude that the district court satisfied its statutory mandate. Section 524.5-420(d) states: "The court shall establish a system for monitoring of conservatorships, including the filing and review of conservators' reports and plans." The statute does not impose a specific monitoring plan but only requires the district court to have a "system" to monitor conservatorships. Here, the district court required respondent to submit an inventory and an annual account, and ordered respondent to provide additional information when respondent's filings appeared incomplete. Therefore, the district court did not violate section 524.5-420(d).

IV

Lastly, appellant argues that the district court abused its discretion by failing to rescind conservatee's in forma pauperis (IFP) status because conservatee did not qualify for IFP status. Appellant's argument is not properly before this court because it was raised for the first time in her reply brief. *See* Minn. R. Civ. App. P. 128.02, subd. 3 (stating that the "reply brief must be confined to new matter raised in the brief of the respondent").

But in any event, we find no merit to appellant's claim. We review district court IFP status decisions for an abuse of discretion. *See Thompson v. St. Mary's Hosp. of Duluth, Minn.*, 306 N.W.2d 560, 563 (Minn. 1981) (holding that the district court "ha[s] broad discretion in determining whether expenses should be paid under the IFP statute").

Under Minn. Stat. § 563.01, subd. 3 (2006), the district court may allow a person to proceed IFP if the person "is financially unable to pay the fees, costs and security for costs." "Persons meeting the requirements of this subdivision include, but are not limited to, a person who is receiving public assistance, . . . or who has an annual income not greater than 125 percent of the [federal] poverty line." *Id.* At the time of the petition to proceed IFP, conservatee's only income consisted of social security and she was in debt to one of her residential facilities. Moreover, during these proceedings conservatee began to receive other public assistance. Therefore, the district court did not abuse its discretion when it denied appellant's motion to rescind conservatee's IFP status.

Affirmed.