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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1233, A09-1518**

In re: Conservatorship of Elizabeth A. Begin, Adult.

**Filed May 25, 2010
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 27-GC-PR-08-429

Lewis A. Remele, Jr., Patrick J. Sauter, David A. Turner, Bassford Remele, A Professional Association, Minneapolis, Minnesota (for appellant Elizabeth A. Begin)

James M. Crist, Steinhagen & Crist, P.L.L.P., Minneapolis, Minnesota (for respondent First Fiduciary Corporation)

Considered and decided by Hudson, Presiding Judge; Lansing, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant argues that the district court erred in ruling that a limited conservator may terminate a contract for representation between a conservatee and her private attorneys and that the district court erred in limiting attorney fees. Because the district court did not clearly err in determining that the contract terminated by the limited conservator was subject to the limited conservator's approval, and because the district court did not abuse its discretion with respect to the award of attorney fees, we affirm.

FACTS

Elizabeth Begin and her late husband owned substantial real estate and commercial entities and have a substantial estate. In 1995, the Begins established an estate plan that included three revocable trusts. When Mrs. Begin's husband died, she was named trustee of the trusts, with two of her daughters as contingent trustees. Since that time, there has been conflict among Mrs. Begin's children over the trusts. This conflict has led to nearly continuous litigation over control of the family businesses.

Mrs. Begin contacted the law firm of Bassford Remele, P.A. (Bassford), in July 2008 to represent her in three actions pending in district court relating to the estate. A formal retainer agreement was signed on August 13, 2008. Settlement negotiations took place in July and August 2008, and a settlement was reached on August 14, 2008.

As the result of the settlement, a limited conservatorship was established to control Mrs. Begin's finances. The conservatorship order was signed on September 22, 2008, and in it, the district court concluded that Mrs. Begin “. . . is impaired in her ability to receive and manage information and make decisions and thus cannot manage property and business affairs as contemplated in Minn. Stat. § 524.5-401.” Accordingly, a mutually-agreed-upon limited conservator was appointed to take charge of the estate.¹ The conservator was granted certain powers in accordance with the conservatorship agreement and Minn. Stat. § 524.5-417 (2008). Those powers include the ability to

¹ The district court also appointed Security Bank & Trust Company as an independent non-family trustee.

approve or withhold approval of any contract which Mrs. Begin may make or wish to make.

On November 6, 2008, Mrs. Begin met with one of the Bassford attorneys to discuss some issues that had arisen due to her new limited access to the estate funds. After the conversation, the Bassford attorney sent an e-mail to the conservator highlighting several issues discussed during the meeting, including Mrs. Begin's access to trust funds, money for Mrs. Begin's upcoming trip to Arizona, funding of tuition for various grandchildren, and payment to a family member for home maintenance. According to the e-mail, Mrs. Begin's primary concern was that her daughter-in-law had not been paid for caretaking services since July 2008. The conservator later testified that a dispute had arisen as to what constituted a reasonable fee for caretaking services.

In response to the e-mail, on November 10, 2008, the conservator's attorney sent a reply stating that Bassford's representation of Mrs. Begin was concluded, that the order appointing the limited conservator determined that Mrs. Begin is incapable of approving a new contract, and that the conservator had the right to withhold approval of any contract. The letter stated that Mrs. Begin's interests were represented by the conservator and trustee and that additional representation was unnecessary and would not be paid for. The conservator testified that after the conservatorship was established, Bassford continued to bill Mrs. Begin at a rate of approximately \$10,000 per month and that this continued billing prompted the termination letter. Bassford replied that the conservator could not terminate the contractual relationship between Mrs. Begin and the firm because the relationship began before the establishment of the conservatorship.

Bassford then filed, on behalf of Mrs. Begin, a petition for an order modifying the powers granted to the conservator, asking the district court to clarify the conservator's powers and confirming her right to further representation by Bassford. The conservator filed a cross-petition to determine whether it had the right to terminate the contract for representation, and an evidentiary hearing was held on April 13, 2009. The district court determined that the conservator had the right to withhold approval of any contract once the conservatorship was established, but did not rule on whether the conservator could terminate a contract entered into prior to its establishment. Instead, the district court determined that Bassford's original contract for representation related only to the settlement of the trust litigation and the establishment of the conservatorship. The district court then determined that the "new issues" raised by Bassford concerning Mrs. Begin's trip to Arizona and the caretaking services were tantamount to a new contract entered into after the conservatorship was established. The district court concluded that the conservator could withhold approval of the new contract and granted the conservator's cross-petition.

The district court also made a ruling relating to Bassford's attorney fees. For its work from August 2008 up to the establishment of the conservatorship in September 2008, Bassford billed \$53,959.89 in legal fees and expenses. The conservator was willing to pay these expenses because the work predated the conservatorship. But Bassford continued to bill approximately \$10,000 per month after the conservator was appointed. The conservator opposed these fees because they were not approved and were incurred after the limited conservatorship was established.

In a supplemental order, the district court awarded attorney fees to Bassford in the sum of \$53,959.89 and denied any fees in excess of that amount. The order was consistent with the district court's earlier order that Bassford's original representation ended with the settlement and establishment of the conservatorship and that any work performed after that point was tantamount to a new contract not approved by the conservator. This appeal follows.

DECISION

I

Appellant argues for reversal of the district court order permitting the termination of Bassford's contract for representation of Mrs. Begin because the attorney-client relationship between Mrs. Begin and Bassford began before the conservator was appointed. Whether a conservator may terminate a contract entered into by the conservatee requires statutory interpretation, which is a legal issue reviewed de novo. See *In re Conservatorship of Malecha*, 607 N.W.2d 449, 451 (Minn. App. 2000). The scope of a contract for representation and whether the purpose of the representation has been fulfilled are factual questions. Factual findings "shall not be set aside unless clearly erroneous," and due regard is given to the district court's credibility determinations. Minn. R. Civ. P. 52.01. "If there is reasonable evidence to support the [district] court's findings of fact, a reviewing court should not disturb those findings." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

The general powers and duties of a conservator include the power "to approve and withhold approval of any contract, except for necessities, which the protected person may

make or wish to make.” Minn. Stat. § 524.5-417(c)(5) (2008). We must decide whether this statutory language authorizes a conservator to withhold approval of new additional expenses or legal work performed by an attorney who entered into a written retainer agreement with the conservatee before the conservatorship was established.

“When interpreting a statute, we first look to see whether the statute’s language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted). Here, the language “may make or wish to make” appears to apply the statute to contracts not yet entered into when the conservatorship is established. *See* Minn. Stat. § 524.5-417(c)(5). As appellant notes, the term “by the protected person” also indicates that the power to approve or withhold approval of contracts applies only when the conservatee is under protection by the conservator. *See id.* Thus, the statute clearly applies to contracts that may be made by the protected person while the conservatorship is in place, but does not as clearly apply to contracts already entered into by the conservatee, which is the situation we are faced with here.

This court has held that an attorney-client contract for representation may be a contract that requires approval by the conservator. *In re Conservatorship of Nelsen*, 587 N.W.2d 649, 651 (Minn. App. 1999). This court has stated that “after [a] conservatorship is established that requires [the] conservator to approve or withhold approval of any contract that the conservatee may make or wish to make, except a contract for necessities,

a conservatee may not retain an attorney without approval by the conservator or the court.” *Id.*

But, as appellant argues, *In re Conservatorship of Nelsen* does not appear to directly apply to contracts for representation formed before the conservator was appointed and while the conservatee still had legal capacity to contract.² In addition, the supreme court has cautioned that a person appointed as a guardian of an estate of an incompetent has limited powers when taking charge of and handling the estate. *Hagen v. Rekow*, 253 Minn. 341, 345, 91 N.W.2d 768, 771 (1958). The conservator or guardian “does not become the alter ego of the incompetent and is not empowered by virtue of his office to act for the incompetent in matters involving the exercise of personal discretion so as to change an act performed by the incompetent while mentally normal.” *Id.*

Here, the district court acknowledged the possibility that a contract could continue during the conservatorship without the conservator’s approval if entered into before the conservatorship. But it concluded that Bassford’s original representation of Mrs. Begin ended upon execution of the settlement agreement and the establishment of the conservatorship. The district court stated:

² Under the terms of the conservatorship agreement, with respect to contracts entered into or made during the three years prior to the establishment of the conservatorship, the conservator has the power to petition the court for review and seek a declaration that the contract be voided if the court finds that Mrs. Begin was incapacitated, subject to duress, coerced, or unduly influenced when the contract was made. This language substantially mirrors the statute allowing a conservator to petition the court to void transactions made before the establishment of the conservatorship under certain conditions. See Minn. Stat. § 524.5-417(e) (2008).

[The Bassford attorneys] were retained by Ms. Begin at a time when this matter was within striking distance of a contested hearing on a conservatorship petition. They were of great assistance in resolving the matter. When that petition was resolved by a compromise among the parties the work for which they were retained was completed. The issues about which they have contacted the conservator, viz., money for Ms. Begin in Arizona and payment to Ms. Welsh for providing care there for Ms. Begin are new issues. At some point [the Bassford attorneys] have fulfilled their obligation as attorneys for the purpose for which Ms. Begin retained them. Afterward, any further representation is tantamount to a new contract. At that point approval of the conservator is required.

Thus, if the original representation had in fact concluded, then any new “contract” would be subject to approval by the conservator as required under the terms of the conservatorship, the statute, and *In re Conservatorship of Nelsen*. See *Nelsen*, 587 N.W.2d at 651-52. Determining the scope of the contractual relationship and whether the “contract” was at an end are factual questions, reviewed under a clearly erroneous standard. See Minn. R. Civ. P. 52.01.

In determining the scope of the contractual relationship, the district court separated the legal work performed while reaching the initial settlement agreement and establishing the limited conservatorship from the “new issues” later raised by Mrs. Begin and her children after the conservatorship was established. Although the record does not contain a copy of the August 13, 2008 retainer agreement signed by Mrs. Begin, it does contain affidavits which provide insight as to the nature of the attorney-client relationship. Specifically, one of the Bassford attorneys stated in an affidavit that the firm was first contacted in July 2008 and asked to represent Mrs. Begin in the three actions that were

pending relating to litigation of disputed trust funds among her family. The pending trust litigation for which Bassford was initially retained concluded when the settlement was reached and the limited conservatorship was established, which was no later than the September 22, 2008 conservatorship order. But the same affidavit also states that Mrs. Begin insisted that Bassford continue to represent her after the appointment of the conservator to insure that there was a proper transition to a conservator. Thus, appellant argued in district court that Bassford's representation is ongoing in nature and relates to the *implementation* of the settlement agreement.

But respondent counters and notes that there was also testimony from the conservator indicating that Mrs. Begin actually wanted the representation to end. In any event, it is clear that the issues concerning Mrs. Begin's access to funds and payments to family members were not contemplated during the original settlement agreement. Indeed, those issues were first raised at a meeting on November 6, 2008, *after* the conservatorship was established. Thus, when Mrs. Begin asked Bassford to represent her on those new issues, she was considered incapacitated and could not make a new contract without the conservator's approval. *See Nelsen*, 587 N.W. 2d at 651-52. As the district court noted, Bassford was hired to help reach a settlement. When the settlement was reached, that representation ended and a new phase of litigation apparently began. Because Bassford is purporting to represent Mrs. Begin with respect to new issues, and other as-yet unknown issues, the district court did not clearly err when it determined that Bassford's representation on those new issues evinced a new contractual relationship

with Mrs. Begin. On this record, the district court did not clearly err in holding that the conservator had the authority to approve or deny this new contract.

Appellant also argues that a protected person's right to counsel is given special weight under the conservator statute. Appellant argues that under Minn. Stat. § 524.5-406 (2008), Mrs. Begin has a right to the counsel of her choosing in relation to all conservatorship matters. That section provides that a respondent to a conservatorship proceeding "has the right to be represented by counsel at any proceeding under this article." Minn. Stat. § 524.5-406(b). But this section only provides that respondent has the right to an attorney during the court proceedings establishing the conservatorship. Once the conservatorship is established, the conservator has "the duty to possess and manage the estate." *Id.*, § 524.5-417(c)(3). The statute does not guarantee the conservatee an attorney to oversee how the conservatorship is effectuated. If Mrs. Begin truly has serious problems with the conservator, there remains a mechanism for challenging and removing the conservator altogether. *See* Minn. Stat. § 524.5-414 (2008).

II

The district court awarded Bassford attorney fees in the amount of \$53,959.89 for the work performed up to the establishment of the conservatorship and denied any additional fees as not authorized by the conservator. An award of attorney fees is reviewed for abuse of discretion. *In re Conservatorship of Malecha*, 607 N.W.2d at 451. Because the representation after the establishment of the conservatorship was not

authorized, the district court did not abuse its discretion in limiting attorney fees to the amount earned before the conservatorship was established.

Affirmed.