



In re Guardianship of Sullivan

893 N.E.2d 343 (2008) | Cited 0 times | Indiana Court of Appeals | August 11, 2008

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MEMORANDUM DECISION

NOT FOR PUBLICATION

Case Summary and Issues

Geneva Underwood appeals the trial court's order granting her brother, Rodger Sullivan, guardianship over their mother, Letha Sullivan. On appeal, Geneva raises two issues, which we restate as 1) whether the trial court improperly excused Letha from attending the hearing on Geneva's petition for appointment of a guardian over Letha and 2) whether the trial court improperly concluded that Rodger was not required to execute a guardian's bond. Concluding the trial court did not improperly excuse Letha from attending the hearing or exempt Rodger from executing a guardian's bond, we affirm.

Facts and Procedural History

In September 1999, Letha, who was seventy-eight years old at the time, moved from her apartment in Plainfield to a home in Danville. Letha's new home was next door to Rodger's home and also was near to where Geneva and Letha's other son, Terrill Sullivan, lived. In December 1999, Letha was diagnosed with dementia. By December 2003, Letha's condition had worsened to the point that she could not live by herself without daily assistance from Geneva, Rodger, and Terrill. By the latter half of 2006, Letha alternated between living with Geneva and Rodger. In January 2007, Rodger admitted Letha into Plainfield Health Center pursuant to authority Letha had granted him in December 2003 to act as her health care representative.

Over the next several months, Geneva became dissatisfied with the care Letha was receiving at Plainfield Health Center and, on April 12, 2007, filed a petition seeking guardianship over Letha. On May 22, 2007, the trial court entered an order appointing a guardian ad litem (the "GAL") "for the purpose of representing the best interests of Letha Bell Sullivan." Appellant's Appendix at 13. On June 18, 2007, the GAL filed a report with the trial court summarizing her investigation and recommending that Rodger be appointed guardian over Letha. On July 9, 2007, the trial court



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conducted a hearing on Geneva's petition, admitting documentary evidence and hearing testimony from the GAL, Geneva, Rodger, and several other witnesses. On July 10, 2007, the trial court entered an order finding that "Rodger Sullivan is the most qualified and suitable person available to serve as Guardian" and therefore appointed Rodger as guardian "[u]pon taking [an] Oath and posting bond." Id. at 7. On July 11, 2007, the trial court entered an amended order that was substantively identical to the July 10th order, except that it omitted the bond requirement. Geneva now appeals.

Discussion and Decision¹

I. Standard of Review

Issues relating to guardianship of an incapacitated person are entrusted to the trial court's discretion. See Ind. Code § 29-3-2-4; *In re Guardianship of V.S.D.*, 660 N.E.2d 1064, 1066 (Ind. Ct. App. 1996). This court will reverse a trial court's decision relating to guardianship only if there has been an abuse of that discretion. See *In re Guardianship of V.S.D.*, 660 N.E.2d at 1066. Abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. Id.

II. Letha's Absence from the Hearing

Geneva argues the trial court improperly excused Letha from attending the guardianship hearing. Indiana Code section 29-3-5-1(d) requires that an alleged incapacitated person must be present at a guardianship hearing relating to the incapacitated person, but excuses the requirement if "it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court." Ind. Code § 29-3-5-1(d)(2).² The trial court apparently excused Letha's attendance at the hearing based on a report from Dr. John Cook, M.D., one of Letha's physicians. See Appellant's App. at 6 (trial court's amended order stating that "Letha Sullivan did not appear in court pursuant to the request of her physician"). In his report, Dr. Cook answered "no" in response to the following question: "Can [Letha] appear in court without injury to [her] health?" Petitioner's Exhibit 2, at 2. Dr. Cook further explained that the medical reason for his answer was "[c]apacity for reasoning and social interaction is limited." Id.

Geneva argues the trial court improperly excused Letha's attendance because although Dr. Cook responded "in the negative to the question, 'Can [Letha] appear in court without injury to [her] health,' . . . limited reasoning and social interaction [cannot] possibly be a, 'threat to her health or safety,'" within the meaning of Indiana Code section 29-3-5-1(d)(2). Appellant's Brief at 6. Although we agree with Geneva that the reason supporting Dr. Cook's conclusion appears unusual, the fact remains he nevertheless concluded that Letha could not appear at the hearing without injury to her health. The trial court apparently relied on Dr. Cook's medical judgment in concluding that Letha's attendance at the hearing should be excused, and we cannot say that such reliance constitutes an abuse of discretion. Thus, it follows that the trial court's decision to excuse Letha's attendance at the



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hearing was not improper.³

III. Posting of Guardian's Bond

Geneva argues the trial court improperly exempted Rodger from executing a guardian's bond. Indiana Code section 29-3-7-1 outlines the steps a trial court must take to fix the amount of a guardian's bond, but states at the outset that a guardian is not required to execute a bond if "the court finds that a bond is unnecessary and enters an order to that effect" Ind. Code § 29-3-7-1(a). Here, the trial court entered an order on July 10, 2007, indicating that Rodger must execute a guardian's bond, but entered an amended order the following day that omitted this requirement. As such, we interpret the trial court's amendment as a finding that a guardian's bond was unnecessary, and the question becomes whether this finding constitutes an abuse of discretion.

Geneva offers little argument on this point, and our research has not disclosed any case addressing the propriety of a trial court's finding that a guardian's bond was "unnecessary" within the meaning of Indiana Code section 29-3-7-1(a). This court has, however, stated that the purpose of a guardian's bond is "to protect the ward and the ward's beneficiaries from damages attributable to a guardian's failure to fulfill the duties of the guardianship." *In re Guardianship of Shaffer*, 711 N.E.2d 37, 42 (Ind. Ct. App. 1999), trans. denied. The trial court apparently had this protective purpose in mind, as its amended order states that Rodger "shall provide all children of Letha Sullivan with a detailed monthly accounting of the income and expenses of Letha Sullivan." Appellant's App. at 9. This monthly accounting requirement is more frequent than general reporting obligations imposed on guardians, see Ind. Code § 29-3-9-6(a) (stating that a guardian is required to file an accounting report with the trial court "at least biennially"), and in light of the broad discretion Indiana Code section 29-3-7-1 grants a trial court in exempting a guardian's bond, we are not convinced the trial court's decision to substitute a monthly accounting for a guardian's bond constitutes an abuse of discretion.

Conclusion

The trial court did not improperly excuse Letha from attending the guardianship hearing, nor did the trial court improperly exempt Rodger from executing a guardian's bond.

Affirmed.

BAKER, C.J., and RILEY, J., concur.

1. Geneva's attorney filed a brief on Geneva's behalf on December 6, 2007. On December 18, 2007, Geneva's attorney filed a motion to withdraw because Geneva had fired him. We granted that motion on January 23, 2008, and also ordered that Geneva was permitted to file an amended brief pro se, but cautioned her that "her Amended Appellant's Brief . . . must comply with the requirements of the Appellate Rules." January 23, 2007, Order. On February 22, 2008, Geneva filed her amended brief, which consisted of the original brief her attorney had filed, as well as materials she apparently prepared



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herself. The portion of the amended brief Geneva prepared simply describes the documents contained in her appendices and summarily concludes with a request, among others, that this court reverse the trial court and remand for a new guardianship hearing. A pro se litigant such as Geneva is held to the same standard as a licensed attorney. See *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). Geneva has not met this standard because the portion of the amended brief she prepared is incoherent and contains numerous violations of our appellate rules, chief among them a failure to comply with Appellate Rule 46(A)(8), which pertains to the Argument section of an appellant's brief. Accordingly, we will address only the portion of Geneva's amended brief that was originally filed by her attorney.

2. Subsection (d) contains three other exceptions, see Ind. Code § 29-3-5-1(d)(1), (3), and (4), but none of them are relevant to this appeal.

3. Because we conclude the trial court did not abuse its discretion in excusing Letha from attending the hearing, we do not address Rodger's alternative argument that Geneva lacked standing to challenge Letha's absence. Nevertheless, we note that a panel of this court has held that only an alleged incapacitated person's guardian ad litem has standing to enforce the incapacitated person's right to be present at a guardianship hearing. See *In Re Guardianship of Atkins*, 868 N.E.2d 878, 887 (Ind. Ct. App. 2007), trans. denied.

