

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 3, 2023

IN RE CONSERVATORSHIP OF JAMES STEELE

Appeal from the Chancery Court for Hamilton County

No. 16-G-049 Pamela A. Fleenor, Chancellor

No. E2022-00840-COA-R3-CV

The appeal arises from a conservatorship proceeding. At issue is whether the trial court erred by quashing the appellant's subpoena of the conservator's records on the basis of res judicata, rendering the document subpoena moot as a matter of law. We have determined that a final judgment had not been rendered on the merits concerning the services rendered by the conservator; thus, res judicata was not applicable. Accordingly, the judgment of the trial court is reversed, and this matter is remanded for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Reversed and Remanded**

FRANK G. CLEMENT JR., P.J., M.S., delivered the opinion of the court, in which ARNOLD B. GOLDIN and KRISTI M. DAVIS, JJ., joined.

W. Troy Hart, Knoxville, Tennessee, for the appellant, U.S. Administrators.

R. Dee Hobbs, Chattanooga, Tennessee, for the appellee, R. Dee Hobbs, Conservator for James Steele.

MEMORANDUM OPINION¹

FACTS AND PROCEDURAL HISTORY

This appeal arises out of a conservatorship proceeding concerning James Steele. At issue are the services rendered by Mr. Steele's former conservator, Linda J. Norwood, Esq.

¹ Tennessee Court of Appeals Rule 10 states,

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall

The workers' compensation insurance carrier, U.S. Administrator Claims—which entered into a workers' compensation settlement agreement with Mr. Steele and continues to provide benefits for him—disputes the appropriateness of Ms. Norwood's services and fees while serving as Mr. Steele's conservator.

Neither party provides an appropriate statement of the case or facts as required by Tennessee Rule of Appellate Procedure 27. Nevertheless, from a review of the record provided by the trial court, it is apparent that a conservator was appointed for the person and estate of James Steele due to injuries he received in a serious on-the-job injury in July 2015.

Specifically, George Pettigrew ("Petitioner"), a claims adjuster with U.S. Administrator Claims of Oak Ridge, Tennessee, filed a petition by and through attorney Linda J. Norwood for the appointment of a conservator for Mr. Steele's estate.² Mr. Steele was forty-seven years old at the time, was not married, and had no children.³ When the petition was filed, Mr. Steele was being treated at NeuroRestorative Carbondale in Carbondale, Illinois.

The petition was supported by an examination report provided by Dr. David A. Solovey, who traveled to NeuroRestorative Carbondale to examine Respondent. The petition alleged that Mr. Steele needed a conservator because of neurological impairment, impaired attention, impaired memory and calculation ability, impaired judgment, and the need to have someone help manage his affairs. Also significant was that Mr. Steele was to receive a sizable insurance settlement that was to be administered by U.S. Administrators for the benefit of Mr. Steele.

Following the filing of the petition, the trial court appointed a guardian ad litem to investigate the matter and to make a report and recommendation to the court. After completing its investigation, the Guardian ad Litem filed a report, which states in pertinent part:

[I]t is the Guardian ad Litem's opinion that a conservator over the person and property of Mr. Steele should be appointed. The individual should be an

be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

² The petition stated that Mr. Pettigrew was "the workers' compensation adjuster managing the claim by Respondent, JAMES STEELE, against the workers' compensation policy of Respondent's Employer, E.B. OPERATING, LLC, from an incident date of July 28, 2015." The liability insurance carrier is Madison Insurance Company.

³ Although his mother was notified of the proceedings, Mr. Steele notified the court through the Guardian ad Litem that he did not want her to be his conservator.

attorney who is well versed in conservatorship law and is familiar with the worker's [sic] compensation laws to ensure that Mr. Steele receives the best care to which he is entitled.

Following an evidentiary hearing, the trial court found that Mr. Steele "was fully disabled as set forth in the Examination Report of Dr. David A. Solovey, and the sworn testimony received at the hearing, and is in need of assistance from the Court pursuant to Tennessee Code Annotated § 34-1-126." Based on these and other findings, the court appointed Linda Norwood as conservator of the person and property of Mr. Steele. Thereafter, Letters of Conservatorship were issued to Ms. Norwood.⁴

Thereafter, Ms. Norwood obtained court consent to hire the law firm of Grant, Konvalinka and Harrison, specifically Herbert Thornbury, to review the workers' compensation claim and any third-party action in this matter on her behalf for the benefit of Mr. Steele.

On March 17, 2017, Ms. Norwood filed a motion to approve a workers' compensation settlement agreement with the employer, EB Operating, LLC, and the insurance carrier, Madison Insurance Company, for permanent total disability pursuant to Tennessee Code Annotated § 50-6-207(4). The motion read in pertinent part:

6. The Employer agrees that Respondent is entitled to benefits for permanent total disability of \$262.35 per week until October 14, 2035, approximately 970 weeks, in the amount of \$254,479.50. Employee will receive a lump sum payment of 100 weeks at \$262.35 in the total amount of \$26,235.00, leaving a total amount due of \$228,244.50 to be paid over 970 weeks, subject to the Court's approval.
7. Respondent's Conservator Linda J. Norwood, will establish The Irrevocable Special Needs Trust for the benefit of James Steele and further represents that the settlement proceeds should be paid to The Irrevocable Special Needs Trust for the benefit of James Steele and delivered to the Conservator.
8. The Conservator and Attorney Thornbury would show the Court that the settlement herein is in the best interests of James Steele, pursuant to Tenn. Code Ann. § 34-1-121(b).

⁴ Initially, the conservatorship was limited to the person of Mr. Steele. The court subsequently expanded her role and appointed Ms. Norwood as Conservator of the Person and Property of Mr. Steele.

The agreement also provided that the employer agreed “to pay for reasonable and necessary authorized future medical expenses which are directly related to the subject injury, pursuant to Tenn. Code Ann § 50-6-204.”

The motion was granted by order entered on April 25, 2017. In the same order, the court also authorized Ms. Norwood to execute the Irrevocable Special Needs Trust Established for the Benefit of Mr. Steele. Ms. Norwood, the employer, and U.S. Administrators subsequently obtained consent to the settlement from the Tennessee Bureau of Workers’ Compensation in the Court of Workers’ Compensation Claims in Chattanooga.

During the first four years, Ms. Norwood would file her annual accountings as well as her annual fee requests, each of which was routinely granted. However, after having served for a few years without discord, the relationship between Ms. Norwood and the workers’ compensation carrier, U.S. Administrators, began to deteriorate in November of 2020, when Ms. Norwood “was contacted by Michael Goff with [U.S.] Administrator concerning issues with [Mr. Steele’s] placement[.]” Prior to this time, she had worked amicably with Mr. Pettigrew. As the relationship continued to sour, W. Troy Hart, an attorney practicing out of Knoxville, Tennessee, filed a Notice of Appearance “on behalf of Defendant, US Administrator Claims.” Then, on March 23, 2022, U.S. Administrators served a subpoena upon Ms. Norwood, requesting Ms. Norwood to produce the following:

Any and all tangible, demonstrative, physical evidence and/or documentation; including but not limited to mileage incurred, dates of meetings, notes associated with meetings, reports associated with meetings and/or confirmation of your actions while discharging your duties as Conservator for James Steele; all documentation that supports and reflects the individual billing activities submitted by you for payment and fees received by you in your role as Conservator; all records associated with your payment of bills, banking transactions, reconciliation of bank statements and any other actions taken on behalf of James Steele in your role as Conservator.

Ms. Norwood subsequently filed a motion to withdraw as Mr. Steele’s conservator and resign as the trustee of the James Steele Special Needs Trust. Ms. Norwood represented that during the first four years of service as the conservator she enjoyed a good working relationship with Mr. Pettigrew and U.S. Administrators; however, circumstances began to change in November of 2020 when she “was contacted by Michael Goff with [U.S.] Administrator concerning issues with [Mr. Steele’s] placement. Thereafter, [Ms. Norwood] did not have any further contact with Mr. Pettigrew.” She further explained the reasons for her request as follows:

5. As a result of the monthly cost for Respondent’s care and [U.S.] Administrator’s investigation and surveillance of Respondent, Mr. Goff

- requested [Ms. Norwood] to find a new placement for Respondent. Prior to this time, [U.S.] Administrator had handled the selection, payment and supervision of Respondent’s placement at Caregivers of Tennessee.
6. In May of 2021, [Ms. Norwood] found a placement for Respondent with Helping Hands Care Ministry (“Helping Hands”). [Ms. Norwood] signed as Conservator the Fee Agreement Contract with Helping Hands on May 27, 2021. On June 7, 2021, Mr. Goff signed the agreement on behalf of [U.S.] Administrator and added a handwritten note that “U.S. Administrators will be provided with monthly reports.”
 7. Under this new placement, [Ms. Norwood] was required to receive the monthly invoices and reports and forward those to [U.S.] Administrator for payment. In November of 2021, [U.S.] Administrator became dissatisfied with the quality and quantity of information contained in the monthly reports from Helping Hands. [Ms. Norwood] worked with Helping Hands to address [U.S.] Administrator’s complaints. Despite this, [U.S.] Administrator delayed paying monthly invoices unless it received notes it deemed adequate. For example, [U.S.] Administrator stated[,] “In simple, No Progress Notes—No Pay.” After reluctantly agreeing to pay the invoice, [U.S.] Administrator stated: “Moving forward, without question, we must have at a minimum, Weekly Notes, and prefer daily notes, of James’ activities. Please do not Underestimate (sic) our level of concern here.” *Id.* (emphasis in original).
 8. Prior to Mr. Goff’s appointment as the contact for [U.S.] Administrator, [Ms. Norwood] had filed five fee applications that were approved by this Court and paid without issue by [U.S.] Administrator. [Ms. Norwood]’s hourly rate for all five fee applications was \$250. On August 24, 2021, [Ms. Norwood] sent [U.S.] Administrator her Motion for Annual Fee and proposed Agreed Order. Mr. Goff asked [Ms. Norwood] to “provide documentation that supports \$250.00 per hour, as our Audit team is looking for this documentation.” “The bills will not be processed without it [supporting documentation].” *See*, email string attached as Exhibit B. After advising Mr. Goff that this Court sets the hourly rate and that [Ms. Norwood]’s rate had not changed since 2016, Mr. Goff stated: “Thank you for that information, but I will let you know that US Administrator has a role in the process, and can Petition (sic) for a change at any time. After the situation we found James in back last fall, and the Total (sic) circumstances that surround that please know that it is a consideration.”

In the motion, Ms. Norwood also described how the relationship continued to deteriorate to the point that she wished to remove herself from the fray:

12. As set forth above, the working relationship with [U.S.] Administrator has deteriorated to the point that [Ms. Norwood] finds it difficult to serve the best interests of Respondent as his Conservator and the trustee of the SNT. [U.S.] Administrator's threats to withhold payment for Respondent's caregivers imperil[] his well-being. [U.S.] Administrator's demands of [Ms. Norwood] to provide information not required by [U.S.] Administrator's contract with Helping Hands, its refusal to timely comply with this Court's Orders for payment of [Ms. Norwood]'s fees and expenses, and the hiring of an attorney ostensibly to re-evaluate Respondent's medical condition but in fact to conduct an investigation of [Ms. Norwood]'s work as Conservator, all indicate that the working relationship between [U.S.] Administrator and [Ms. Norwood] has been irreparably harmed.

WHEREFORE, [Ms. Norwood] respectfully requests this Court to grant her Motion, to permit her to withdraw as Conservator and resign as Trustee, and to appoint a Successor Conservator and a Successor Trustee of the SNT.

On May 10, 2022, the trial court entered an order that reads in pertinent part:

This cause came to be heard on the 2nd day of May 2022, upon the Motion to Withdraw as Conservator, For Appointment of a Successor Conservator, to Resign as Trustee, and for Appointment of a Successor Trustee (the "Motion") by Linda J. Norwood, Conservator (the "Conservator") for James Steele (the "Respondent") and the Conservator's oral motion to Quash Subpoena served by U.S. Administrators, pursuant to T.C.A. Sections 34-1-101 et. seq. and 34-1-108. The Court finds as follows:

A. The Conservator's motion for fees and expenses was approved in September 2021 by this Court and U.S. Administrators did not file any objection to the fee motion nor did anyone from U.S. Administrators attend the Court hearing.

B. A Subpoena issued on March 23, 2022, by U.S. Administrators requested:

"Any and all tangible, demonstrative, physical evidence and/or documentation; including but not limited to mileage incurred, dates of meetings, notes associated with meetings, reports associated with meetings and/or confirmation of your actions while discharging your duties as Conservator for James Steele; all documentation that supports and reflects the individual billing activities submitted by you for payment and fees received by you in your role as Conservator; all records associated with your payment of bills, banking transactions,

reconciliation of bank statements and any other actions taken on behalf of James Steele in your role as Conservator.”

- C. The Order Approving Annual Fee was entered by this Court on September 29, 2021, making the issue of the Conservator’s fees res judicata, and rendering the document subpoena moot as a matter of law.⁵
- D. The Conservator’s Motion to Withdraw as Conservator and Trustee is well founded.
- E. U.S. Administrators has asked for time to select their own conservator and trustee, which this Court will consider the nominee if a Petition is filed on or before May [17], 2022.
- F. The Conservator agreed to continue serving as the conservator and trustee until a Successor Conservator and Successor Trustee are appointed by this Court.

It is therefore, **ORDERED, ADJUDGED, and DECREED that:**

- 1. The Subpoena issued on March 23, 2022, by U.S. Administrators be and hereby is QUASHED and the Conservator shall have no obligation to respond in any manner to same;
- 2. The Motion be and hereby is GRANTED subject to U.S. Administrators filing a petition, if it so elects, for the nomination of its own conservator and trustee, on or before May 17, 2022;
- 3. Linda Norwood will remain the Conservator and Trustee for the benefit of the Respondent until further Order of this Court; and
- 4. Costs of this cause are taxed against the assets the Respondent.

On May 10, 2022, U.S. Administrator filed a petition for the appointment of Laura Metcalf to replace and succeed Ms. Norwood as the conservator for Mr. Steele.

The competing motions for the appointment of a successor conservator came on for hearing on July 15, 2022. Thereafter, the court appointed attorney R. Dee Hobbs as Mr. Steele’s conservator and trustee of his special needs trust. In the same order, Ms. Norwood

⁵ The court also added in cursive handwriting: “The Court reviewed the fee affidavit and found all the work necessary and the fees reasonable.”

was relieved of all of her former responsibilities and ordered to file her final fee request and accounting.

On August 4, 2022, Ms. Norwood filed her final fee request for the period from August 24, 2021 through August 3, 2022. Contemporaneously, she also submitted her final accounting. In an order entered on November 15, 2023, Ms. Norwood's final fee request was approved by the trial court. Pursuant to an order entered on January 9, 2023, the final order confirming Ms. Norwood's final accounting and releasing her surety was entered.

In the interim, on June 22, 2022, U.S. Administrator filed its notice of appeal.

ISSUE

The sole issue raised by U.S. Administrator (hereinafter "Appellant") is whether the trial court erred in quashing the subpoena filed by U.S. Administrators. For her part, the successor conservator, R. Dee Hobbs ("Appellee"), contends the appeal is untimely because there is no final judgment from which to appeal.

STANDARD OF REVIEW

We review a trial court's decision regarding the application of *res judicata de novo* without a presumption of correctness because it presents a question of law. *See Napolitano v. Bd. of Pro. Resp.*, 535 S.W.3d 481, 496 (Tenn. 2017).

ANALYSIS

We begin with Appellee's contention that this appeal is untimely and/or premature. To make this determination, we must first ascertain the nature of the dispute or claim that is at issue, and it is readily apparent that the dispute concerns the services rendered by the now-former conservator, Linda Norwood.

When the notice of appeal was filed, Ms. Norwood was still serving as the conservator for Mr. Steel. Further, she had not yet applied for her final fee request, and her final accounting had not been submitted. As we explained in another appeal from a conservatorship proceeding where a final decision had not yet been made,

A final judgment is a judgment that resolves all the claims between all the parties, "leaving nothing else for the trial court to do." *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997). An order that adjudicates fewer than all the claims between all the parties is subject to revision any time before the entry of a final judgment and is not appealable as of right. Tenn. R. App. P. 3(a); *King v. Spain*, No. M2006-02178-COA-R3-CV, 2007 WL 3202757 at *8 (Tenn. Ct. App. October 31, 2007).

Our review of the November 14, 2007, December 11, 2007, and January 7, 2008 orders leads to the inevitable conclusion that none of the three orders constitutes a final judgment. Each order specifically refers to the conservator as “temporary”; *each order grants relief only “pending” a further hearing; and each order specifically contemplates and discusses a “final hearing” to be held sometime in the future.* The November 14, 2007 order set a future review hearing “to determine if the Temporary Conservator shall be made a Full Time Conservator.” The December 13, 2007 order set a future hearing to determine whether any further treatment would be necessary “pending the Final Hearing in this cause.” The January 7, 2008 order states that it was to determine if further medical treatment was necessary “pending a final hearing in this cause.” None of these orders can be read as a final decision on the Petition for Appointment of Conservator.

In re Conservatorship of Tate, No. M2009-02174-COA-R10-CV, 2009 WL 4841036, at *3 (Tenn. Ct. App. Dec. 15, 2009) (emphasis added).

A party is entitled to an appeal as of right only after the trial court has entered a final judgment. Tenn. R. App. P. 3(a). A final judgment is a judgment that resolves all the claims between all the parties, “leaving nothing else for the trial court to do.” *See In re Conservatorship of Tate*, 2009 WL 4841036 (stating that an order granting a conservatorship is final for purposes of appeal if the order “resolves all the claims between all the parties, ‘leaving nothing else for the trial court to do’” (quoting *State ex rel. McAllister*, 968 S.W.2d at 840)).

An order that adjudicates fewer than all the claims is subject to revision at any time before the entry of a final judgment and is not appealable as of right. Tenn. R. App. P. 3(a); *In re Est. of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003). Thus, when Appellant filed its notice of appeal on June 22, 2022, a final judgment concerning Ms. Norwood’s services as conservator for Mr. Steele had not been entered. As a consequence, the notice of appeal was premature.

Nevertheless, based on subsequent filings by the parties, we know that the trial court subsequently entered orders appointing a successor conservator, terminating Ms. Norwood’s tenure as conservator, awarding Ms. Norwood’s final fee request, and approving her final accounting. Specifically, on July 15, 2022, the court appointed attorney R. Dee Hobbs as Mr. Steele’s conservator and ordered Ms. Norwood to file her final fee request and accounting. Thereafter, on August 4, 2022, Ms. Norwood filed her final fee request for the period from August 24, 2021 through August 3, 2022. She also submitted her final accounting.

In an order entered on November 15, 2023, Ms. Norwood’s final fee request was approved by the trial court. And finally, pursuant to an order entered on January 9, 2023,

the court confirmed Ms. Norwood's final accounting and released her surety. Thus, as a consequence of the last order that was entered on January 9, 2023, there was nothing else for the trial court to do concerning Ms. Norwood's services as Mr. Steele's conservator. *See In re Conservatorship of Tate*, 2009 WL 4841036, at *3; *see also State ex rel. McAllister*, 968 S.W.2d at 840. As a consequence, the January 9, 2023 order constituted a final judgment concerning Ms. Norwood's services as conservator.

Although a notice of appeal filed prior to the entry of a final judgment will be deemed premature, it will be treated as filed as of the date the trial court enters a final judgment. *See Tenn. R. App. P. 4(d)*. Thus, we find the notice of appeal in this case to have been timely filed as of January 9, 2023.

This brings us to Appellant's sole issue: whether the trial court erred in quashing its subpoena of Ms. Norwood's records while serving as Mr. Steele's conservator.

The doctrine of res judicata is a "[r]ule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." *Richardson v. Tennessee Bd. of Dentistry*, 913 S.W.2d 446, 459 (Tenn. 1995) (quoting Black's Law Dictionary 1172 (5th ed. 1979)). "It is a claim preclusion doctrine that prohibits a subsequent lawsuit between the same parties with respect to all issues that were or could have been litigated in a previous suit." *McGee v. Jacobs*, 236 S.W.3d 162, 167 (Tenn. Ct. App. 2007) (citing *Massengill v. Scott*, 738 S.W.2d 629, 631 (Tenn. 1987)).

In this case, when Appellant filed its subpoena, there had been no final adjudication concerning the services Ms. Norwood had rendered, or was continuing to render, as conservator for Mr. Steele. In fact, even after the subpoena was quashed, Ms. Norwood continued to serve as Conservator, as directed by the trial court in the same order, until a successor was appointed. The subpoena was quashed by order entered on May 10, 2022, while Ms. Norwood was still serving as Mr. Steele's conservator, and she continued to serve in that capacity until July 15, 2022, when the order was entered appointing attorney R. Dee Hobbs as Mr. Steele's conservator.

It is also significant that none of the orders entered prior to January 9, 2023, constituted a final judgment. As noted above, one of the essential elements of the doctrine of res judicata is that "a final judgment" must have been rendered on the merits that "constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." *Richardson*, 913 S.W.2d at 459 (quoting Black's Law Dictionary 1172 (5th ed. 1979)). That had not occurred when the subpoena was quashed. Thus, res judicata was not applicable.

For completeness, we also note that the trial court found the claim res judicata on the basis of Ms. Norwood’s fee application. This is evident from the court’s ruling, which reads in pertinent part: “The Order Approving Annual Fee was entered by this Court on September 29, 2021, making the issue of the Conservator’s fees res judicata, and rendering the document subpoena moot as a matter of law.” However, after the subpoena was quashed, the court ordered Ms. Norwood to submit her final fee request; thus, a final judgment concerning the fees to which Ms. Norwood was entitled to receive or return had not been entered.

For the foregoing reasons, we find the trial court erred in quashing the subpoena on the basis of res judicata.⁶

IN CONCLUSION

For the foregoing reasons, the judgment of the trial court is reversed and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the appellee, R. Dee Hobbs, in her capacity as Conservator for James Steele.

FRANK G. CLEMENT JR., P.J., M.S.

⁶ Following the “principle of party presentation” as discussed in *State v. Bristol*, 654 S.W.3d 917, 923 (Tenn. 2022), our ruling is limited to the issue of res judicata, which is the only issue raised and briefed by the parties. “[A]n appellate court’s authority ‘generally will extend only to those issues presented for review.’” *Id.* (quoting Tenn. R. App. P. 13(b)) (citing *Hodge v. Craig*, 382 S.W.3d 325, 333–34 (Tenn. 2012)); *see also State v. Harbison*, 539 S.W.3d 149, 165 (Tenn. 2018) (“An appellate court may decline to consider issues that a party failed to raise properly.”). Thus, whether U.S. Administrators is or is not entitled to discover the documents and records sought from Ms. Norwood pursuant to its subpoena and, if so, to what extent, is not discussed in this decision. Thus, that issue is left to the sound discretion of the trial court.