IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 1, 2023

IN RE CONSERVATORSHIP OF GREGORY BLAKE ARVIN

Appeal from the Chancery Court of Bedford County
No. 34119 J. B. Cox, Chancellor

No. M2022-01808-COA-R3-CV

This appeal arises from a conservatorship proceeding. The issues on appeal concern the assessment of the fees of the attorney ad litem in the amount of $1,060. The trial court assessed the fees against the petitioners and the respondent, jointly and severally. The petitioners appeal, contending that, pursuant to Tennessee Code Annotated § 34-1-125, the court had no discretion but to assess the fees of the attorney ad litem against the respondent. The petitioners and the estate of the respondent also challenge the assessment of the fees against the respondent on other grounds. We have determined that the trial court was statutorily required to assess the fees of the attorney ad litem against the respondent and that it lacked the discretion to assess the fees against the petitioners. We have also determined that the petitioners have no standing to challenge the assessment of the fees against the respondent and that the issues raised by the estate of the respondent lack merit. Thus, we reverse the assessment of the fees of the attorney ad litem against the petitioners but affirm the assessment of the fees against the respondent.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court of Bedford County Reversed in Part; Affirmed in Part; 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.

Rhonda Saylor and Peter Trenchi, III, Shelbyville, Tennessee, pro se appellants.

Peter Trenchi, III, Shelbyville, Tennessee, for the appellant, the Estate of Gregory Blake Arvin.

OPINION

FACTS AND PROCEDURAL BACKGROUND

On August 24, 2022, Rhonda Saylor and Peter Trenchi, III, ("Petitioners") filed a verified petition for emergency ex-parte appointment of conservator for the benefit of Gregory Blake Arvin ("Respondent"). Petitioners are the mother and stepfather of the Respondent.

In pertinent part, Petitioners alleged that the Respondent "suffers from mental and cognitive disabilities which limits his ability to make financial, health and maintenance decisions and is in need of the appointment of an emergency Conservator to manage his affairs until a permanent conservator can be appointed with the necessary Report of Physician and other filings." The Respondent was a residential patient at the Smoky Mountain Lodge at Pasadena Villa in Sevierville, Tennessee, when the petition was filed.[1]

By order entered on August 24, 2022, the trial court ruled: "It appears that Respondent is in need of an emergency conservator pursuant to Tennessee Code Annotated § 34-1-132, and failure to act will likely result in substantial harm to the Respondent's health, safety, or welfare" and appointed Petitioners as emergency co-conservators pursuant to Tennessee Code Annotated § 34-1-132.

In the same order, the court appointed attorney Kristin B. Brown as attorney ad litem "to represent Respondent in the proceeding pursuant to Tennessee Code Annotated § 34-1-132" and attorney Trisha Henegar as guardian ad litem.[2] Shortly thereafter, Jonathan Fagan was appointed as successor guardian ad litem due to Ms. Henegar having a conflict of interest.[3]

Following "an appropriateness hearing" on August 30, 2022, the court ordered that "until such time as a medical Affidavit from Mr. Arvin's treating physician stating he is not in need of a conservatorship is filed with the Court, the Petitioners shall remain as emergency co-conservators[.]"

---

[1] The Smoky Mountain Lodge at Pasadena Villa is a residential psychiatric treatment center, which provides treatment for mental health disorders.

[2] "An emergency guardian or conservator may be appointed without notice to the respondent and the attorney ad litem only if the court finds upon a sworn petition that the respondent will be substantially harmed before a hearing on the appointment can be held." Tenn. Code Ann. § 34-1-132. "The court shall hold a hearing on the appropriateness of the appointment within five (5) days after the appointment." *Id*.

[3] Pursuant to Tennessee Code Annotated § 34-1-125(a), "[t]he attorney ad litem shall be an advocate for the respondent in resisting the requested relief." Conversely, "[t]he guardian ad litem owes a duty to the court to impartially investigate the facts and make a report and recommendations to the court. The guardian ad litem serves as an agent of the court, and is not an advocate for the respondent or any other party." Tenn. Code Ann. § 34-1-107(d)(1).

On September 8, 2022, the Respondent, by and through Ms. Brown as his attorney ad litem, filed a motion for "emergency status conference." In support of the motion, the Respondent asserted that:

> Petitioners represented to the Court on August 30, 2022 that the "emergency" necessitating this conservatorship was the need for the Respondent to attend a medical appointment with Vanderbilt regarding his epilepsy. Petitioners have since canceled the appointment for no legitimate reason. Respondent would further show that despite having emergency authority over his medical care for two weeks, Petitioners have failed to produce an Affidavit from a treating physician stating a conservatorship is needed. Respondent believes that Pasadena Villa, his current inpatient facility, is ready to medically discharge Respondent but is waiting out of fear of legal repercussion from the Petitioners. Respondent would show this is not in his best medical interest. Respondent would further show that his civil and Constitutional rights are being interfered with for no legitimate purpose as there is no emergency that would necessitate an emergency conservatorship at this time.

The requested hearing was held on September 9, 2022. The order that followed reads as follows:

> Present before the Court were the Attorney ad Litem for Mr. Arvin, Kristin B. Brown, in person, Respondent Blake Arvin, Guardian ad Litem Jonathan Fagan, and Petitioner Peter Trenchi, III, all by Zoom. Based on the arguments and presentations of counsel and the statements of the Petitioner and representative of Pasadena Villa, the Court finds that there is no longer an emergency regarding Mr. Arvin. The Court hereby ORDERS the emergency conservatorship dissolved and DISMISSED effective immediately.

Shortly thereafter, the attorney ad litem filed a motion for attorney fees, which was supported by an affidavit in which she represented that she had billed a total of $1,060.00. Petitioners filed a response to the motion for fees. They did not challenge the amount of the fee; however, they denied any responsibility for the attorney ad litem fees "since respondent is financially able to pay as he has been determined by this court to be independent and without any incapacity." They also relied on Tennessee Code Annotated § 34-1-125(b), which reads, in pertinent part, "The cost of the attorney ad litem shall be charged against the assets of the respondent." Additionally, Petitioners challenged the propriety of assessing any of the fees against the Respondent. Neither the guardian ad litem nor the Respondent opposed the attorney ad litem's motion for fees.

In the order that followed, the court stated:

> 1. That the attorney fees sought are reasonable and necessary. Attorney Kristin B. Brown is awarded a judgment for fees in the amount of $1,060.00.

2. That while Petitioner is correct in his argument that the black letter of the statute calls for payment of attorney fees to come from the estate of the Respondent in conservatorship actions, in the present case, the Petitioners were unsuccessful in their Petition and, thus, the Court exercises its discretion and orders the Petitioners, Peter Trenchi and Rhonda Saylor, and Respondent Gregory Blake Arvin are all jointly and severally liable for the judgment awarded to attorney Kristin B. Brown for her fees in the amount of $1,060.00 for which execution may lie if necessary.

IT IS SO ORDERED.

Petitioners subsequently filed a timely notice of appeal.

ISSUES

Petitioners raise three issue on appeal; however, we have determined that the only issue Petitioners raise for which they have standing is whether the trial court "abused his discretion by holding Petitioners liable for [attorney ad litem] fees in direct contradiction of T.C.A. § 34-1-125."[4] The other two issues raised by Petitioners challenge the propriety of assessing any of the fees against the Respondent. For reasons we explain later in this opinion, Petitioners lack standing to raise these two issues because they are not aggrieved by the award of fees against the Respondent. *See Koontz v. Epperson Elec. Co*., 643 S.W.2d 333, 335 (Tenn. Ct. App. 1982).

Petitioner, Rhonda Saylor, acting on behalf of the estate of her son, Gregory Blake Arvin, the Respondent, raises two issues, which are the same as the second and third issue raised by Petitioners.[5] One is whether the attorney ad litem violated Rules of Professional Conduct by filing a motion for her fees, which the trial court assessed against the Respondent and Petitioners, jointly and severally. The other issue is whether the judgment against the Respondent is void without adequate service of process on the Respondent.

The attorney ad litem did not make an appearance nor file a brief; thus, she did not raise any issues.

ANALYSIS

I. TENNESSEE CODE ANNOTATED § 34-1-125

Petitioners contend that the trial court "abused his discretion by holding Petitioners liable for [attorney ad litem] fees in direct contradiction of T.C.A. § 34-1-125."

[4] The fees of the guardian ad litem are not at issue on appeal.

[5] The Estate of Gregory Blake Arvin was granted leave to be substituted for the Respondent who died on January 24, 2023, during the pendency of this appeal.

"[I]ssues of statutory construction are questions of law." *Ki v. State*, 78 S.W.3d 876, 879 (Tenn. 2002) (quoting *Stewart v. State,* 33 S.W.3d 785, 791 (Tenn. 2000)). We review such issues de novo, "according no presumption of correctness to the conclusions reached by the trial court." *Id*. (citations omitted).

Tennessee Code Annotated § 34-1-125 states in pertinent part:

> (a) . . . The attorney ad litem shall be an advocate for the respondent in resisting the requested relief.
>
> (b) The cost of the attorney ad litem shall be charged against the assets of the respondent.

"When construing statutes, we are required to ascertain and effectuate the legislative intent and purpose of the statutes." *Ki*, 78 S.W.3d at 879. We should "assume that the legislature used each word in the statute purposely and that the use of [each] word[] conveyed some intent." *Id*. (quoting *State v. Levandowski,* 955 S.W.2d 603, 604 (Tenn. 1997)) (alteration in original). "Legislative intent must be derived from the plain and ordinary meaning of the statutory language if the statute is devoid of ambiguity." *Id*. (citing *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000)).

The statute expressly states that "[t]he cost of the attorney ad litem *shall* be charged against the assets of the respondent." Tenn. Code Ann. § 34-1-125(b) (emphasis added). "When 'shall' is used in a statute or rule, the requirement is mandatory." *Bellamy v. Cracker Barrel Old Country Store, Inc.*, 302 S.W.3d 278, 281 (Tenn. 2009) (citing *Stubbs v. State,* 393 S.W.2d 150, 154 (Tenn. 1965)).

With these principles in mind, we find the plain and ordinary meaning of the statute mandates that the fees of the attorney ad litem in a conservatorship be assessed against the respondent in the conservatorship proceeding.[6] We also find that the statute does not afford the trial court the discretion to deviate from the express language. *See In re Conservatorship of Allen*, No. M2019-00469-COA-R3-CV, 2020 WL 1873473, at *4 (Tenn. Ct. App. Apr. 15, 2020).[7] As we explained in *Allen*:

---

[6] There is an exception to this mandate when "the principal purpose for bringing the petition is to benefit the petitioner and there would otherwise be little, if any, need for the appointment of a fiduciary[.]" Tenn. Code Ann. § 34-1-114(b). In such event, "the costs of the proceedings may be assessed against the petitioner, in the discretion of the court." *Id.*

[7] In the *Allen* case, we also noted that the court has the discretion to assess the guardian ad litem fees, but not the attorney ad litem fees:

> Moreover, we find the legislative history for § 114(a) [concerning guardians ad litem] and § 125(b) [concerning attorneys ad litem] significant. In 2012, the legislature amended § 114(a) by replacing "shall" with "may, in the court's discretion." *See* 2012 Tenn. Pub. Acts

> Here, § 125(b) unambiguously states the costs of the attorney ad litem are to be assessed against the respondent, and § 121(a) unambiguously gives the trial court authority to waive requirements when waiver is in the respondent's best interest. Nonetheless, after applying the rules of statutory construction, we have determined that § 121(a) does not give trial courts discretion to waive § 125(b)'s mandate.[8]

Id.

In this case the trial court assessed the fees of the attorney ad litem against Petitioners and the Respondent, jointly and severally. Accordingly, we find that the trial court erred by assessing the fees against Petitioners. Thus, we reverse and modify the judgment of the trial court in this respect.

II. STANDING

The two additional issues Petitioners raise, each of which only challenge the propriety of assessing the fees of the attorney ad litem against the Respondent, are: whether the attorney ad litem violated multiple parts of Rule 8, Rules of Professional Conduct in filing a motion to recover her attorney's fees which were assessed against her client, Respondent, and whether the judgment is void for lack of service of process against Respondent. The trial court assessed the fees of the attorney ad litem against Petitioners and Respondent, jointly and severally. We have determined that the trial court erred by assessing the fees against Petitioners and have ruled that the fees may only be assessed against the Respondent as Tennessee Code Annotated § 34-1-125 expressly provides. Nevertheless, Petitioners seek to challenge the propriety of the assessment of the fees against Respondent.

> 917, § 1. However, the legislature did not change the mandatory language in section § 125(b), which had been in effect since 2002. *See* 1992 Tenn. Pub. Acts 794, § 21. Thus, the legislature removed the mandate concerning the fees of guardians ad litem but not attorneys ad litem.

Allen, 2020 WL 1873473, at *5.

[8] Tennessee Code Annotated § 34-1-121(a) states:

> The court has broad discretion to require additional actions not specified in this chapter, and chapters 2 and 3 of this title as the court deems in the best interests of the minor or person with a disability and the property of the minor or the person with a disability. The court also has discretion to waive requirements specified in this chapter, and chapters 2 and 3 of this title if the court finds it is in the best interests of the minor or person with a disability to waive such requirements, particularly in those instances where strict compliance would be too costly or place an undue burden on the fiduciary or the minor or the person with a disability.

Because Petitioners are attempting to assert the rights of another party, we must first consider whether Petitioners have standing to prosecute on appeal issues that only pertain to the rights and responsibilities of the Respondent. The issue of whether a party has standing is a question of law. *Massengale v. City of E. Ridge*, 399 S.W.3d 118, 123 (Tenn. Ct. App. 2012); *Cox v. Shell Oil Co.,* 196 S.W.3d 747, 758 (Tenn. Ct. App. 2005).

"The doctrine of standing is used to determine whether a particular plaintiff is entitled to judicial relief." *City of Brentwood v. Metro. Bd. of Zoning Appeals*, 149 S.W.3d 49, 55 (Tenn. Ct. App. 2004) (citing *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976)); *Garrison v. Stamps*, 109 S.W.3d 374, 377 (Tenn. Ct. App. 2003). "It requires the court to determine whether the plaintiff has alleged a sufficiently personal stake in the outcome of the litigation to warrant a judicial resolution of the dispute." *Id*. (citing *SunTrust Bank v. Johnson*, 46 S.W.3d 216, 222 (Tenn. Ct. App. 2000); *Browning-Ferris Indus. of Tenn., Inc. v. City of Oak Ridge*, 644 S.W.2d 400, 402 (Tenn. Ct. App. 1982)).

"[O]nly an aggrieved party has [the] right to prosecute an appeal." *Koontz v. Epperson Elec. Co*., 643 S.W.2d 333, 335 (Tenn. Ct. App. 1982) (internal citations omitted). An aggrieved party is one "having an interest recognized by law which is injuriously affected by the judgment [] or whose property rights or personal interest are directly affected by its operation." *Id*. (internal citations omitted).

We have determined that the fees of the attorney ad litem are to be assessed against the Respondent, not Petitioners. Moreover, as Petitioners stated in opposing the attorney ad litem's motion for attorney's fees, "[R]espondent is financially able to pay as he has been determined by this court to be independent and without any incapacity." Thus, Petitioners are not "aggrieved" by the award of such fees against the Respondent.

The party claiming standing bears the burden of establishing three essential elements. *Petty v. Daimler/Chrysler Corp*., 91 S.W.3d 765, 767–68 (Tenn. Ct. App. 2002); *Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ*., 645 S.W.3d 141, 149 (Tenn. 2022). One of the essential elements is that the party "has suffered an injury which is 'distinct and palpable' and not conjectural or hypothetical." *Id*. (internal citations omitted). Petitioners have failed to demonstrate that they have suffered or will suffer an injury that is "distinct and palpable" as a consequence of the assessment of the attorney ad litem attorney's fees against the Respondent. *See id.; see also Metro. Air Rsch. Testing Auth., Inc.*, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992). Because this is an essential element of establishing standing, we conclude that Petitioners lack standing to challenge the assessment of the attorney ad litem fees against the Respondent.

III. THE ESTATE OF GREGORY BLAKE ARVIN

The estate of the Respondent raises two issues. For its first issue, the estate contends the attorney ad litem violated Rules of Professional Conduct by filing a motion for her fees which the trial court assessed against the Respondent and Petitioners, jointly and severally.

We find no merit to this contention for two reasons. One, as noted above, Tennessee Code Annotated § 34-1-125 mandates that "the cost of the attorney ad litem shall be charged against the assets of the respondent." Furthermore, the trial court found the fees sought by the attorney ad litem were "reasonable and necessary." Thus, we find no impropriety with the attorney ad litem making the fee request or with the trial court's decision to assess the fees against the Respondent.

The estate also contends that the judgment against the Respondent is void for lack of service of process on the Respondent. We find this contention lacks merit because the Respondent made a voluntary general appearance in the trial court proceedings by filing a motion for "emergency status conference." *See Matter of Grosfelt*, 718 S.W.2d 670, 672 (Tenn. Ct. App. 1986). The Respondent challenged the merits of the petition by alleging that the petition filed by Petitioners was "not in his best medical interest" and that "his civil and Constitutional rights are being interfered with for no legitimate purpose as there is no emergency that would necessitate an emergency conservatorship at this time." Thus, even if service of process were deficient, it was waived when the Respondent made a voluntary general appearance in the trial court by filing the motion. *See id*. (citing *Tenn. Dept. of Hum. Servs. v. Daniel,* 659 S.W.2d 625 (Tenn. App. 1983)) ("A voluntary general appearance is equivalent to personal service of summons on the defendant and a defendant makes a general appearance, thereby consenting to the jurisdiction of the court over his person, by acting in a manner inconsistent with the claim of absence of jurisdiction."). Accordingly, we find no merit to either issue raised by the estate of the Respondent, Gregory Blake Arvin.

For the reasons set forth in this opinion, we reverse the assessment of the fees of the attorney ad litem against Petitioners but affirm the assessment of such fees against the estate of the Respondent, Gregory Blake Arvin.

IN CONCLUSION

The judgment of the trial court is reversed in part and affirmed in part, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed jointly and severally against Petitioners, Rhonda Saylor and Peter Trenchi, III, and the Respondent, the Estate of Gregory Blake Arvin.

_____

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