

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5407-14T1

IN THE MATTER OF
J.F. (Deceased),
an Incapacitated Person.

Argued December 6, 2016 — Decided February 14, 2017

Before Judges Ostrer and Vernoia.

On appeal from the Superior Court of New
Jersey, Chancery Division, Probate Part,
Monmouth County, Docket No. P-221-14.

Scott L. Puro argued the cause for appellants
the Estate of J.F. and The Society for the
Propagation of the Faith (Backes & Hill,
L.L.P., attorneys; Harry R. Hill, Jr. and Mr.
Puro, on the briefs).

Stacey Crowell Maiden argued the cause for
respondent Guardian of J.F. (Hoyle Law, LLC,
attorneys; Ms. Maiden, of counsel and on the
brief).

PER CURIAM

The Society for the Propagation of the Faith (the Society),
as the sole beneficiary under the 1995 will of J.F., appeals from
the Probate Part's order approving the settlement of the first and
final formal accounting of the guardian who managed J.F.'s

substantial estate during her final years. The Society contends the trial court should have charged the guardian for alleged losses incurred in her efforts to dispose of J.F.'s real property; and should have disallowed the expenditure of legal fees to the guardian, an attorney, and accounting fees to an outside accountant. Having considered the Society's arguments in light of the record and applicable principles of law, we affirm.

I.

We discern the following facts from the record. J.F. had no known family members when, at the age of eighty-three, she was adjudged mentally incapacitated on September 29, 2006. The court appointed Stacey Crowell Maiden, an attorney, as guardian of the person and property of J.F. As guardian, Maiden was responsible for managing J.F.'s medical and personal affairs and locating and marshalling J.F.'s assets. J.F. died on March 2, 2012.

When Maiden was first appointed, J.F.'s net assets totaled \$2,330,579.42. She had multiple sources of continuing income, including: several mutual funds, securities, pensions, annuities, long term care insurance, and Social Security. Disbursements included those related to regular expenses of adult day care, assisted living, care management, medical expenses including professional fees, medical supplies, and prescriptions, as well as costs related to the management of her property. Given the

complexity of J.F.'s estate, Maiden retained WithumSmith & Brown P.C. (WS&B) to prepare the first and final formal accounting of the guardianship. This accounting covered the period of September 29, 2006 through March 2, 2012, detailing every transaction involving the guardianship estate.

When Maiden was appointed, J.F. owned residential real property in Red Bank, New Jersey and Boynton Beach, Florida. According to Maiden, both properties were "in a great state of disarray and disrepair[.]" The homes contained "years of accumulated mail and personal items" and "no cleaning [had been] done in some time" Maiden inspected the homes, collected J.F.'s personal items, and made necessary repairs. After obtaining appraisals for the properties, which were initially valued at \$330,000 (Red Bank) and \$210,000 (Boynton Beach), she put the properties up for sale. She ultimately sold the Red Bank property for \$250,710.65 on December 21, 2007.

Maiden did not have the same success with the Florida property. When she first travelled to Florida, in December 2006, she discovered that a squatter occupied the condominium and that the squatter's mother possessed J.F.'s birth certificate and social security card. Maiden eventually made two more trips to the Florida property. During her trips, she consulted with a real estate agent, obtained necessary repairs to the property, and

retained a caretaker to oversee the unit and supervise repair work.

Maiden obtained the \$210,000 appraisal on December 9, 2006. In the midst of a falling market, she obtained a second appraisal on March 18, 2009, which valued the property at \$120,000. Guided by these appraisals, Maiden initially listed the Florida property at \$189,000 but reduced the price four times, \$179,000, \$130,000, \$118,000, and ultimately to \$89,000 in December 2011. During her five-and-a-half-year guardianship, she received only one purchase offer, for \$40,000 in January 2012. She rejected it.

Shortly after J.F.'s death, Maiden transferred to the estate the remaining assets of the guardianship, which totaled \$1,979,472.17. Three months after J.F.'s death, the Society reduced the Florida property listing price to \$69,000, based on the sales of comparable properties. The condominium ultimately sold a few months later for \$67,000.

On July 28, 2014, Maiden filed a verified complaint in Monmouth County for settlement of the first and final formal accounting. In her complaint, Maiden sought: payment of accounting fees incurred by WS&B; allowance of costs incurred in travelling to Florida; income, corpus, and final distribution commissions pursuant to N.J.S.A. 3B:18-24, -25 and -28,

respectively; attorney fees; and an order discharging her as guardian of J.F.

The Society filed exceptions to Maiden's complaint.¹ The Society contended Maiden breached her fiduciary duty by failing to list the Florida condominium at a reasonable price. The Society sought a surcharge of \$143,000, based on the difference between the initial \$210,000 appraised value of the Florida condominium and the \$67,000 sale price. The Society also objected to the \$36,011.81 in maintenance and upkeep charges for the Florida property and the \$5,971.12 allowance for trips to Florida. The Society also argued she possessed the skills and knowledge to conduct an accounting of J.F.'s estate, because she holds an MBA "concentrating in accounting" according to Maiden's law firm profile. Therefore, WS&B's accounting fees were unreasonable. The Society also requested that Maiden forfeit all of her corpus, income, and final distribution commissions, which totaled \$108,259.46, based on her alleged "willful gross misconduct."

Shortly after Maiden's July 2014 filing in Monmouth County, the Society also filed a separate action in Mercer County, alleging

¹ In her verified complaint, Maiden alleged she had provided her accounting to attorneys for J.F.'s Estate, who obtained their own review of the accounts, and raised objections to Maiden's management of J.F.'s assets. Maiden anticipated the Estate's formal objections in her verified complaint.

that Maiden was negligent in her service as guardian. Mirroring its objections in the Monmouth County proceedings, the Society sought as damages the alleged \$143,000 loss in the sale of the Florida property, the charges related to her trips to Florida and the upkeep of the property, and the accounting fees. Maiden later sought reimbursement for her fees incurred in responding to the Mercer County action. The Society objected.

After oral argument,² the trial judge rejected all of the Society's exceptions. The judge concluded, "[t]here is absolutely no evidence that the conduct of Ms. Maiden was gross misconduct that was willful or fraudulent." The judge found that Maiden acted in what she believed was the best interest of the ward. Regarding Maiden's trips to Florida, the judge stated that "it would have been a dereliction of duty if Ms. Maiden did not go to Florida to find out what was happening there and left it for other people." The judge also determined that the accounting fees were reasonable in view of the size of the ward's estate and the duration of Maiden's guardianship, and it was appropriate to charge the estate for the amount. The judge also concluded that Maiden's certification of fees complied with Rule of Professional Conduct 1.5(a), and awarded her attorney's fees pursuant Rule 4:42-9. The

² We note that neither party sought a plenary hearing to resolve factual disputes.

trial court entered an order on July 30, 2015, approving settlement of the first and final formal accounting.

On appeal, the Society essentially renews the arguments it presented to the trial court relating to the sale and expenses of the Florida property, accounting fees, and attorneys fees.³ The Society also contends the court erred in discharging Maiden as guardian.

II.

Our review "of a trial court's fact-finding function is limited." Cesare v. Cesare, 154 N.J. 394, 411 (1998). Generally, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). We shall not disturb the trial court's findings "unless they are so clearly insupportable as to result in their denial of justice." Estate of Ostlund v. Ostlund, 391 N.J. Super. 390, 400 (App. Div. 2007). Furthermore, the fixing of a fiduciary's commissions, to the extent not mandated by law, is left to the trial court's discretion, which an appellate court will only set aside in the case of an abuse. See In re Trust Estate of Moore, 50 N.J. 131, 149 (1967). We review de novo the

³ The Society does not contend on appeal that Maiden should be denied any or all commissions based on alleged misconduct.

trial court's interpretation of the law. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

The role of a guardian of an incapacitated person's estate is largely statutory. In re Guardianship of A.D.L., 208 N.J. Super. 618, 623 (App. Div. 1986). N.J.S.A. 3B:12-36 to -64 prescribe a guardian's powers to manage an incapacitated person's estate. See In re Keri, 181 N.J. 50, 57 (2004). Under this statutory scheme, a guardian of an incapacitated person may:

expend or distribute so much or all of the income or principal of his ward for the support, maintenance, education, general use and benefit of the ward . . . , in the manner, at the time or times and to the extent that the guardian, in an exercise of a reasonable discretion, deems suitable and proper, taking into account the requirements of the "Prudent Investor Act[.]"

[N.J.S.A. 3B:12-43 (emphasis added).]

A guardian must also "take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and, where appropriate, sell or dispose of such effects to meet current needs of the ward[.]" N.J.S.A. 3B:12-57(f)(5). Moreover, under the Prudent Investor Act, N.J.S.A. 3B:20-11.3(a), a guardian has a duty to exercise reasonable care, skill, and caution, when investing or managing a trust or estate's assets. In sum, when reviewing the guardian's management of the estate of an incapacitated person, the court must determine whether the actions

were in "the best interest of the ward[.]" In re Keri, supra, 181 N.J. at 57 (internal quotation marks and citation omitted).

Turning first to the Society's contention that Maiden mishandled the sale of the Florida condominium,⁴ there is simply no evidence to support a finding that Maiden breached her fiduciary duty. When Maiden took control of J.F.'s properties and assets, the country was in the midst of a housing market collapse. The record also indicates that Maiden, who was unfamiliar with the Florida real estate market, reasonably relied on two different appraisals, adjusting the price of the Florida property four times, guided by the appraisals. Had she found a willing and ready buyer, she would have been required to establish that the sale was consistent with two appraisals, pursuant to Rule 4:94-2.

Moreover, there was no evidence showing there was a ready, willing and able buyer during Maiden's guardianship. In particular, the Society has presented no real estate expert to opine that had Maiden marketed the property differently – for example, had she lowered the price sooner – she would have secured a buyer, and, if so, at what price. The trial court did not err

⁴ As a preliminary matter, we note the Society misplaces reliance on N.J.S.A. 3B:10-26 and supporting case law, which describe the duty and standard of care to be observed by a personal representative, rather than a guardian. See also N.J.S.A. 3B:1-1 to -2 (defining "guardian" and "personal representative").

in refusing to hold Maiden responsible for the results of a falling market. See In re Westfield Trust Co., 117 N.J. Eq. 429, 433-34 (E. & A. 1935) (refusing to surcharge a fiduciary for investment losses incurred as a result of a market collapse, noting that "[w]isdom after the event is not the test of responsibility").

The Society also challenges the trial court's order reimbursing Maiden for her trips to the Florida property, which the Society argues were unnecessary. Aside from the general authority under N.J.S.A. 3B:12-43 to make expenditures, N.J.S.A. 3B:12-44 states:

The guardian of the estate may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the ward pursuant to the recommendations of a parent or guardian of the person unless the guardian knows that the parent or the guardian is deriving personal financial benefit therefrom, or unless the recommendations are clearly not in the best interests of the ward.

N.J.S.A. 3B:12-45 also permits a guardian to expend the ward's estate when "reasonably necessary for the support, education, care or benefit of the ward[.]" Notably, our Supreme Court has recognized "the particular difficulty of caring for the real property of an elderly incompetent[.]" In re Reutlinger, 140 N.J. 231, 240 (1995).

The trial court reasonably concluded that Maiden's trips conformed with her general fiduciary duties as a guardian. Given that J.F. was deemed mentally incapacitated, with no family or friends with whom Maiden could speak, these trips were necessary for Maiden to assess and marshal J.F.'s assets. Additionally, these trips were for the ward's benefit, since Maiden obtained J.F.'s vital records (including her birth certificate and social security card), identified and obtained needed repairs of the Florida property, and retained a local caretaker to maintain the property.

Since Maiden holds an MBA, the Society contends Maiden possessed the ability to perform the accounting herself and should be surcharged WS&B's accounting fees. However, N.J.S.A. 3B:14-23(x) grants a fiduciary the conditional authority to employ accountants, at the expense of the estate, without reducing commissions. Whether fees are chargeable depends on the skills and background of the fiduciary and the nature of the accounting services. Fees are chargeable:

so long as such accountings are not the usual, customary, or routine services provided by the fiduciary in light of the nature and skill of the fiduciary. In evaluating the actions of the fiduciary under this subsection, the court shall consider the size and complexity of the fiduciary fund, the length of time for which the accounting is rendered, and the increased risk and responsibilities imposed on

fiduciaries as a result of revisions to laws
affecting fiduciaries[.]

[N.J.S.A. 3B:14-23(x) (emphasis added).]

N.J.S.A. 3B:14-23(x) thus requires a court to perform a case-specific evaluation of the enumerated factors. In particular, charges are not permitted for services that would be "usual, customary or routine" for the particular fiduciary, given the nature and skills of the fiduciary. Ibid.⁵

Maiden is an attorney; although she holds an MBA, she is not a professional accountant. Cf. N.J.S.A. 3B:14-23(x) (defining accountant as a registered certified public accountant or an accounting firm licensed to practice public accounting). She was tasked with, among other guardianship duties, managing an estate worth more than \$2 million for a period of over five and a half years. Additionally, the estate's numerous sources of income and multiple expenses illustrate its complexity. The record supports a finding that estate accounting was not within her skills or

⁵ We are mindful that the legislation initially authorized the charge of accounting fees without conditions, but was amended in accord with the Governor's conditional veto. See Governor's Conditional Veto Message to S.1479 (2003) (enacted as L. 2003, c. 33). The Governor's proposed amendment was chiefly directed at corporate fiduciaries and was designed to limit them from charging fees for accounting services that the fiduciaries were capable of performing themselves. Ibid. ("Traditionally, the grantor's expectation is that, at a minimum, a corporate fiduciary will perform basic fiduciary accounting internally." (emphasis added)).

regular responsibilities as a guardian. Therefore, given the size, complexity, and length of time Maiden was responsible for managing J.F.'s estate, we shall not disturb the trial court's decision that it was reasonable for Maiden to retain WS&B, pursuant to N.J.S.A. 3B:14-23(x).⁶

The Society also contends the trial court erred in awarding Maiden attorney's fees for "routine duties of a guardian" and defending the malpractice lawsuit. An award of counsel fees "rests in the sound discretion of the trial court" and will not be reversed absent a demonstration of manifest misuse or abuse of discretion. In re Will of Landsman, 319 N.J. Super. 252, 271 (App. Div.), certif. denied, 161 N.J. 335 (1999). We discern none here.

N.J.S.A. 3B:18-6 authorizes a court to award attorney's fees "[i]f the fiduciary is a duly licensed attorney of this State and shall have performed professional services in addition to his fiduciary duties" The record supports the trial court's conclusion that Maiden acted beyond her duties as guardian. After

⁶ In re Estate of Summerlyn, 327 N.J. Super. 269 (App. Div. 2000), upon which the Society relies for the proposition that the accounting fees should have been deducted from Maiden's commissions, was decided before the enactment of section 23(x). In any event, we adhered in Summerlyn to the general principle that we will disturb a trial court's determination regarding a fiduciary's commission only for an abuse of discretion. Id. at 272.

J.F.'s death, she was responsible for preparing legal pleadings and litigating the application to settle the accounts – duties atypical of guardians. As for the fees related to Maiden's malpractice defense, we discern no error in the court's decision to award these fees, particularly inasmuch as the claims in that action mirrored the exceptions the Society raised in the Monmouth County proceeding, and Maiden incurred these fees as a result of her role as court-appointed guardian. We also discern no error in the court's calculation of the amount of fees. See Rendine v. Pantzer, 141 N.J. 292, 317 (2001) ("fee determinations by trial courts will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion.").

Finally, we shall not disturb the court's order discharging Maiden as guardian. A guardian's authority and responsibility terminate upon the death of the ward. N.J.S.A. 3B:12-64(a)(2). However, termination does not insulate a guardian from liability for prior acts. N.J.S.A. 3B:12-64(b).

To the extent not addressed, the Society's remaining points lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION