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No. 605224

COURT OF APPEALS DIVISION 1
OF THE STATE OF WASHINGTON

In re: the Guardianship of Valentin Medvedev

Andrei Medvedev and Maria Medvedeva, appellants

BRIEF OF APPELLANTS

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 MAR -2 PH 12:33

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I. Introduction

The relevant facts are undisputed in this case. On February 28, 2006 Valentin Medvedev, late husband and father of the appellants Maria Medvedeva and Andrei Medvedev, respectively, suffered a stroke. He was brought in for treatment to the University of Washington Medical Center, where due to the negligence of those caring for him he developed a profound disability called locked-in syndrome. He died of these injuries in 2008.

On December 21, 2006 Valentin Medvedev was declared legally incapacitated in a King County Superior Court proceeding and a professional guardian, Partners in Care, was appointed as a full guardian of his person and estate. In May and July 2011 the guardian obtained court approval and judgments for substantial fees totaling tens of thousands of dollars, all without the notice required by RCW 11.92.180 to DSHS even though Valentin Medvedev was a DSHS client, and in violation of WAC 388.09.030.

On July 30, 2007 Maria Medvedeva was appointed a successor full guardian of Valentin Medvedev's person and estate, following the resignation of Partners in Care as his guardian. The Order so appointing Maria Medvedeva is the subject of this appeal, as it orders professional guardian fees in excess of the Court's jurisdiction and places permanent restraints on the appellants that the trial Court had no jurisdiction to impose in the context of the Guardianship action.

On September 25, 2007 Maria Medvedeva petitioned for Chapter 7 bankruptcy relief for herself and Valentin Medvedev, following which the appeal was stayed for the duration of the bankruptcy proceeding. The bankruptcy proceeding proved to be a highly litigious one, but it was eventually resolved in late 2010 and a bankruptcy

discharge was obtained in late 2010. In the meanwhile, Valentin Medvedev passed away in late 2008, and a probate proceeding was instituted for him in December 2008, for which no creditor claims have ever been filed.

II. Assignments of Error

Assignment of Error No. 1

Appellants assign error to the trial Court's order to pay Guardian ad Litem's fees and costs in the amount of \$40,407.00 (CP 41, paragraph 12).

Assignment of Error No. 2

Appellants assign error to the trial Court's order to pay the fees of counsel for incapacitated person of \$12,293.00 (CP 41, paragraph 13).

Assignment of Error No. 3

Appellants assign error to the trial Court's order to pay the fees of former guardian Partners in Care and its attorneys of \$62,172.02 and previously entered judgments (CP 41, paragraph 14).

Assignment of Error No. 4

Appellants assign error to the trial Court's imposition of the permanent restraining order on them (CP 43-44, paragraph 20, subparagraphs a and d).

Assignment of Error No. 5

Appellant Andrei Medvedev assigns error to the trial Court's Conclusion of Law II. 3 that the Court has jurisdiction over them for the purposes of entry of the restraining order (CP 37).

Issues Pertaining to the Assignments of Error

Issue No. 1

Whether the trial Court lacked jurisdiction to order guardianship fees and costs for an incapacitated person who was a DSHS client in excess of the amounts allowed by WAC 388-79-030.

Issue No. 2

Whether the trial Court lacked jurisdiction under the guardianship statute RCW 11.88 to impose a permanent restraining order upon the appellants.

Issue No. 3

Whether the trial Court lacked personal jurisdiction over a non-party appellant Andrei Medvedev.

III. Statement of the Case

At the time of entry of the Order under Appeal on July 30, 2007 (CP 35-47), Valentin Medvedev was a DSHS client. *Partners' in Care Response to Motion for Revision*, CP 13-21.

Andrei Medvedev was not a party to this guardianship case. In fact, this Court has previously ruled in Case No 594460 on March 16, 2007 that Andrei Medvedev was not a party to this guardianship case.

IV. Legal Argument

- A. Trial court imposed fees and costs upon the estate of incapacitated person in excess of its jurisdiction.

This appeal rests exclusively upon jurisdictional issues, thus they may be raised for the first time on review under RAP 2.5(a). Specifically, WAC 388-79-030 provides that the Superior Court may impose the maximum guardianship fees and costs for a guardianship of a DSHS client in the amount of not more than \$175 a months, and the total guardianship establishment fees and costs of not more than \$700. State regulation does not allow these fees to be exceeded, except in extraordinary circumstances by prior petition to DSHS, which did not occur here. *In re Guardianship of Lamb*, (citation pending), Supreme Court Docket No 62711-2 (2011). Clearly, the guardianship fees and costs imposed by the Order under appeal (as listed in the Assignments of Error 1-3) are far in excess of these limits. Accordingly, the Court was without jurisdiction to impose them.

B. Trial court lacked jurisdiction to impose permanent restraints upon the appellants.

The order under appeal is a an Order Appointing Guardian, which established a guardianship pursuant to RCW 11.88, yet it also imposed new permanent restraints upon the appellants in regard to their contact with certain area medical institutions. There is no explicit authority in the guardianship statute, RCW11.88, for the Court to limit contact between thirds parties in the context of a guardianship proceeding. Even if we are to assume that the Court possessed this authority under the plenary power provisions of RCW 11.96A.020, it certainly cannot extend beyond the time the Court itself loses

jurisdiction due to termination of the guardianship for whatever reason, i.e., the restraints cannot be permanent. In Washington, guardianship automatically terminates upon the death of the ward, RCW 11.88.140(1)(c), which leaves no discretion in the hands of the Court to perpetuate its jurisdiction beyond the termination. The Court was thus without jurisdiction to adopt any restraints that would, by their very language, carry over under the authority of the Court after its statutory jurisdiction has terminated.

C. Trial court lacked jurisdiction to impose restraints upon non-party appellant Andrei Medvedev

The portion of the Order under appeal that imposes permanent restraints upon the appellants is also flawed in relation to Andrei Medvedev because the trial Court had no personal jurisdiction over him to impose any restraints at any point in time. As Order Appointing Guardian is a judgment of the Court, it falls under the provision of Washington Court Rule 54(a)(1), which states that the judgment is a final determination of the rights of the parties to the case. Since Andrei Medvedev was previously ruled to be a non-party, the Court lacked any personal jurisdiction over him in respect to imposing any restraints on contact with third parties in the context of the guardianship proceeding.

V. Conclusion

For the aforementioned reasons, the fee and restraint provisions (specified above in the Assignments Of Error) in the July 30, 2007 Order Appointing Guardian should be reversed.

Respectfully submitted,

Dated: March 1, 2012

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