

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Renee Carr and Sheree Strickland,
Respondents Below, Petitioners,

vs.) **No. 21-0224** (Upshur County 20-P-44)

Penny C. Parcell,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioners Renee Carr and Sheree Strickland, by counsel Roy H. Cunningham, appeal the Circuit Court of Upshur County's February 18, 2021, final order approving respondent's petition and discharging conservatorship and guardianship. Respondent Penny C. Parcell, by counsel William J. O'Brien, filed a response in support of the circuit court's order. Petitioners filed a reply.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

The parties herein are the only children of Mrs. Doris J. Carr. Respondent held a medical and durable power of attorney for Mrs. Carr and acted as Mrs. Carr's conservator and guardian. In 2015, petitioners initiated legal proceedings to have a guardian and conservator appointed for Mrs. Carr and to remove respondent as Mrs. Carr's power of attorney.¹ Following a hearing before a mental hygiene commissioner, petitioners' request was rejected, and respondent was appointed as sole conservator and guardian of Mrs. Carr, pursuant to the West Virginia Guardianship and Conservatorship Act (West Virginia Code §§ 44A-1-1 to 44A-5-9).

As part of her duties, respondent filed yearly accountings and guardian/conservator reports. These reports and supporting documentation were filed in the Upshur County Circuit Clerk's office and with the Upshur County Fiduciary Commissioner and were available for review. In July of 2020, Mrs. Carr died testate. At a subsequent hearing before the Upshur County Commission, Mrs.

¹ Petitioners filed a case styled, *In re: Doris J. Carr*, in the Circuit Court of Upshur County. That case was assigned Case No. 15-G-5 and is not at issue in this appeal.

Carr's Last Will and Testament, dated May 12, 1994, was declared to be valid and was admitted to probate. The Commission granted respondent's request to be appointed administratrix and denied petitioners' request for appointment. The will and order of the Upshur County Commission were entered on September 21, 2020.

In late October of 2020, respondent filed a verified petition to discharge the guardianship and conservatorship and sought compensation as conservator. A copy of the petition and notice of hearing was served, by certified mail, upon the fiduciary commissioner and petitioners. On December 16, 2020, petitioners filed their response to the petition for discharge, which included seven counterclaims that set forth objections and identified deficiencies in the inventory and each of the six yearly accountings filed by respondent as conservator. Respondent's petition was initially set for hearing on November 2, 2020, but was rescheduled to January 5, 2021, at the request of petitioners' counsel. An amended notice of hearing was filed by respondent and served upon petitioners' counsel.

At the January 5, 2021, hearing, the court took up the petition for hearing; however, counsel for petitioners moved to continue the hearing because counsel presumed that the hearing was a scheduling conference only, despite counsel having received an amended notice of hearing for the petition. Over respondent's objection, the court granted petitioners' motion to continue and rescheduled the matter to January 14, 2021. On January 6, 2021, petitioners filed a motion to continue the hearing until a scheduling order was entered. At the January 14, 2021, hearing, the circuit court denied petitioners' motion to continue, finding that the motion was untimely filed. Further the court found that petitioners had "ample notice" of the hearing on the merits of the petition and noted that a scheduling order was not required for this proceeding.

By order entered on February 18, 2021, the court rejected petitioners' arguments and observed that since the inception of guardianship/conservatorship, petitioners had not challenged any of the guardian/conservator reports submitted by respondent. Further, the court found that petitioners did not present any evidence of misconduct of respondent in her capacity as conservator or guardian, but instead claimed an alleged impropriety with the accountings. However, the court noted that all of the necessary reports and accountings had been filed with and reviewed by the Upshur County Circuit Clerk and the fiduciary commissioner, neither of whom reported any "incompleteness, questions, [or] discrepancies," requested any supplementation of the reports or accountings, or requested additional information from respondent. Based upon these facts, the court reasoned that the reports and accountings were adequate to satisfy respondent's duties as guardian and conservator and, thus, rejected petitioners' arguments.

As to compensation of respondent as guardian/conservator, the court noted a list of activities performed by respondent including caring for Mrs. Carr's properties and pets; purchasing food and personal care items for Mrs. Carr; interviewing, hiring, and paying employees to assist with Mrs. Carr's care; coordinating with an accountant to pay appropriate taxes owed by Mrs. Carr; assisting with lawn maintenance on Mrs. Carr's multiple properties; coordinating service of Mrs. Carr's mower; seeing to basic maintenance of Mrs. Carr's farm, two residential properties, and Mrs. Carr's personal vehicles; overseeing Mrs. Carr's banking and other financial activities at multiple institutions; paying Mrs. Carr's utilities for all properties in a timely manner; maintaining Mrs. Carr's multiple gas well bonds and coordinating maintenance and repair of gas well and lines;

and implementing and maintaining security measures at Mrs. Carr's primary home. The Court found the amount of \$800 per month, \$48,000 total, as reasonable compensation for the frequency and types of service provided by respondent. It is from the circuit court's February 18, 2021, order approving respondent's petition for discharge that petitioners now appeal.

Generally, we have held that "[t]his Court reviews the circuit court's final order and ultimate disposition under an abuse of discretion standard. We review challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*." Syl. Pt. 6, *In re Donald M.*, 233 W. Va. 416, 758 S.E.2d 769 (2014) (citing Syl. Pt. 4, *Burgess v. Porterfield*, 196 W. Va. 178, 469 S.E.2d 114 (1996)). On appeal, petitioners assert nine assignments of error, which we will address in turn. However, as several of the assignments of error are similar in nature, those assignments of error will be addressed together.

In their first and second assignments of error, petitioners contend that the circuit court erred in failing to enter a scheduling order, citing Rule 16(b) of the West Virginia Rules of Civil Procedure and Rule 16 of the West Virginia Trial Court Rules. Rule 16(b) of the West Virginia Rules of Civil Procedure provides, in pertinent part, that

. . . the judge shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail or other suitable means, enter a scheduling order that limits the time: (1) To join other parties and to amend the pleadings; (2) To file and hear motions; and (3) To complete discovery.

Rule 16 of the West Virginia Trial Court Rules generally addresses time standards in various types of cases. Rule 16.05: Time Standard in Civil Cases, provides that circuit courts are required to comply with the provisions of Rule 16(b) of the West Virginia Rules of Civil Procedure. However, Rule 16.05(a)(Applicability) states that Rule 16.05 "governs general civil cases and does not apply to . . . guardianship or conservatorship [cases.]" Instead, different rules were adopted for these matters. Under Trial Court Rule 16.10 (Guardianship and Conservatorship Proceedings), subsection (d) requires that "[h]earings on post-appointment petitions or motions shall be held within sixty (60) days of the filing of such petitioners or motions."

Based upon our review of the record and the clear application of Trial Court Rule 16.10, we find that the circuit court did not abuse its discretion in denying petitioners' request for a scheduling order. Rule 16.10 only required the court to conduct a hearing on respondent's post-appointment petition within sixty days of the filing of the petition, not to enter a scheduling order. Respondent's petition was filed on October 20, 2020, and was initially set for hearing on November 2, 2021, well within the sixty-day requirement set forth in Trial Court Rule 16.10(d). Accordingly, we find no error.

In their third, fourth, and fifth assignments of error, petitioners contend that the circuit court erred in applying West Virginia Code § 44A-3-11(a)(5), which provides that:

(a) Reports of guardians and accountings of conservators, as described in this article shall be filed with the circuit clerk of the county in which appointed and also with the fiduciary commissioner of the county or other person if the court has made a

referral in its order. . . (5) When the appointment of the guardian or conservator is terminated, except that in the case of a guardian, the court may determine that there is no need for a report upon the termination; and in the case of a conservator, no accounting is required if all persons entitled to any proceeds of the estate consent thereto.

This Court has long held that “[w]here the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.” Syl. Pt. 1, *In re Frieda Q.*, 230 W. Va. 652, 742 S.E.2d 68 (2013) (citing Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995)). In the case *sub judice*, petitioners argue that in not permitting them to object to all the accountings filed by respondent or to not require respondent to provide a “proper final account[ing],” (to include more detailed information related to disbursements and receipts)² that the court misapplied West Virginia Code § 44A-3-11(a)(5).³ We disagree.

First, we note that respondent did provide a proper final accounting and, in fact, provided the necessary accounting and reports during the tenure of her appointment as guardian/conservator. West Virginia Code § 44A-3-11(a)(5), required respondent to file reports and accountings at certain prescribed times, which was undisputedly completed by respondent. We have held that “[i]t is not for this Court arbitrarily to read into a statute that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted.” Syl. Pt. 11, *Brooke B v. Donald Ray C., II*, 230 W. Va. 355, 738 S.E.2d 21 (2013). West Virginia Code § 44A-3-11(a)(5) does not address objections to the reports and accountings by “all persons entitled to any proceeds of the estate,” as alleged by petitioners. Rather, West Virginia Code § 44A-3-11(b) mandates only that the Circuit Clerk and fiduciary commissioner are required to review said reports and accountings to determine if the same are “administratively incomplete” and require “additional information.” As noted above, the Circuit Clerk and fiduciary commissioner reviewed the reports and accounts submitted by respondent and determined the same to be administrative complete and never requested any supplemental information. Thus, as the circuit court properly interpreted and applied West Virginia Code § 44A-3-11(a)(5), we find no error.

Finally, in assignment of errors six, seven, and eight, petitioners argue that the circuit court erred in dismissing petitioners’ seven counterclaims noting objections to the inventory and each of the yearly accountings filed by respondent as conservator and awarding compensation to respondent as conservator. We initially note that the parties agree that West Virginia Code § 44A-3-11(c)(1) provides, in pertinent part, that “all compensation and expenses of the conservator shall

² Petitioners complain that, for example, respondent lists in several of the previously filed accountings “payroll,” without providing who was paid and for what services; and “household expenses,” without providing a further explanation of the expense.

³ Additionally, in support of their position, petitioners cite West Virginia Code § 44A-3-11(a)(f) and contend that it requires a conservator (such as respondent), to account to “all persons entitled to any proceeds in the estate.” However, West Virginia Code § 44A-3-11 (a)(f) simply directs this Court to “prescribe forms for reports, accountings and inventories required to be filed pursuant to the provisions of this article.”

be allowed and approved only by the circuit court[.]” However,, petitioners contend that the circuit court improperly ignored their claims of deficiencies in the accountings submitted by respondent. Specifically, petitioners argue that respondent’s reports and accountings did not provide, as required by West Virginia Code § 44A-3-9(a), all the “receipts, disbursements and distributions from the estate under the conservator’s control during the period covered by the accounting.” Because of this deficiency, petitioners argue that it was “impossible” for the circuit court to determine reasonable compensation for the conservator.

Conversely, respondent argues that she met the requirements of West Virginia Code § 44A-3-9(a) and included a list of receipts and disbursements using the approved forms for accounting. Further, respondent provided a list of duties she performed daily for Mrs. Carr during her guardianship/conservatorship, which support the award of compensation to respondent for her services. Based upon our review of the record and as stated succinctly above, we agree with respondent and find no error.

For the foregoing reasons, we affirm the February 18, 2021, final order approving respondent’s petition and discharging conservatorship and guardianship.

Affirmed.

ISSUED: May 26, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton

DISQUALIFIED:

Justice C. Haley Bunn