

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-1326

KRISTIN KUELBS, DONALD HILL, and
EDWARDENA HILL

APPELLANTS

V.

KIMBERLY HILL

APPELLEE

Opinion Delivered October 26, 2011

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. PR07-610-2]

HONORABLE VICKI SHAW COOK,
JUDGE

AFFIRMED; MOTION FOR
SANCTIONS DENIED

ROBERT J. GLADWIN, Judge

The appellants in this guardianship case challenge three orders from the Garland County Circuit Court's probate division: (1) an order to force-feed medication to the ward, Kristin Kuelbs; (2) an order rescinding equal access to Kristin by her mother and siblings; (3) an order prohibiting appellants Donald and Edwardena Hill from contacting Kristin. Appellants argue that the court erred by entering the orders without conducting a hearing or giving notice to counsel. We find no error and affirm.

This is the fifth opinion our court has issued in this matter. Litigation began in 2007 when appellant Donald Hill and appellee Kimberly Hill filed competing petitions for guardianship of their adult sister Kristin Kuelbs, who was injured in a 2001 automobile accident.¹ Dr. Paul Deyoub conducted a psychological evaluation of Kristin and found her

¹Donald's wife, appellant Edwardena Hill, joined in his petition.



incapacitated due to mental illness. The circuit court appointed a social worker and a banking institution as Kristin's guardians.

During the case, Kristin was represented by attorney Justin Hurst, by an attorney ad litem, and by appellant Donald Hill, a newly licensed attorney. The circuit court disqualified Hurst early in the case, but Donald, on behalf of himself and Kristin, appealed from the court's guardianship ruling and other intermediate rulings.

While that appeal was pending, the circuit court continued to enter orders in the case. The court eventually disqualified Donald as Kristin's attorney but appointed him as her guardian. In that capacity, Donald was ordered to admit Kristin to a mental-health facility within ten days. When he did not do so, the court removed Donald as guardian and appointed Kimberly in his stead. Kimberly, a Minnesota resident, quickly moved Kristin to the Mayo Clinic in Rochester, Minnesota. Donald then filed a second appeal, challenging the court's appointment of Kimberly as guardian and the court's jurisdiction to enter decrees after the first notice of appeal was filed.

Both appeals were submitted to this court simultaneously. We affirmed the circuit court's rulings in the first appeal. *Kuelbs v. Hill*, 2010 Ark. App. 427, 379 S.W.3d 47 (*Kuelbs I*). In the second appeal, we remanded for supplementation of the record and rebriefing. *Kuelbs v. Hill*, 2010 Ark. App. 412 (*Kuelbs II*). Once that was accomplished, we addressed the merits of the second appeal, upholding the circuit court's jurisdiction to enter orders while the first appeal was pending and affirming Kimberly's appointment as guardian. *Kuelbs v. Hill*, 2010 Ark. App. 793, 379 S.W.3d 716 (*Kuelbs III*).



In the interim, Donald filed a third appeal, reiterating his challenge to Kimberly's guardianship and to the circuit court's jurisdiction to enter orders following the first notice of appeal. Having resolved those issues in Kimberly's favor in *Kuelbs III*, we dismissed that portion of the third appeal. *Kuelbs v. Hill*, 2010 Ark. App. 804 (*Kuelbs IV*). We determined, however, that one of Donald's arguments had not yet been addressed by this court, and we permitted the parties to brief that point. The point in question concerns the entry of three orders in March and April 2009, bringing us to the present appeal.

The facts are as follows. The court appointed Kimberly as Kristin's guardian on March 19, 2009, and allowed her to transport Kristin to a psychiatric facility in Minnesota. Within days, Kimberly relocated Kristin to the Mayo Clinic. On March 25, 2009, Kimberly filed a Petition to Force Feed the Ward. The petition and accompanying attachments stated that Kristin had refused to take her antipsychotic medication; that the medication was in Kristin's best interest and could prevent harm to herself and others; and that the medication could not be forcibly administered under Minnesota law without a court order. On March 26, 2009, the court entered an order allowing the forced administration of the medication, as long as it remained the advice of Kristin's treating psychiatrist.

On March 27, 2009, Donald filed a Petition for Equal Access. He explained that the Mayo Clinic's personnel told him that Kimberly would not allow him to contact Kristin and that he wanted to try to persuade Kristin to take her medication. A short time later, the court entered an order granting Kristin's mother and siblings equal access to Kristin. On April 2, 2009, however, the court rescinded its order and ruled that any access to Kristin by persons



other than her guardians or her attorney ad litem would be entirely upon the direction of the Mayo Clinic.

On April 24, 2009, Kimberly filed a motion to prohibit Donald from contacting Kristin. The motion stated that Kristin had been released from the Mayo Clinic and that she was taking her medications but that Donald had contacted the clinic, claiming to represent Kristin and attempting to interfere with her treatment. On the same day that the motion was filed, the court entered a no-contact order. The order recited that, based on the history of the case, neither Donald nor Edwardena Hill, nor anyone on their behalf, could contact Kristin without Kimberly's express consent.

Donald, on behalf of himself, Edwardena, and Kristin, now appeals from the three orders entered on March 26, 2009, April 2, 2009, and April 24, 2009. He argues that the orders were erroneously entered without a hearing and without notice.

We have no jurisdiction to hear the appeal from the no-contact order entered on April 24, 2009. No appeal was taken from that order until September 8, 2009. A notice of appeal filed more than thirty days after the order appealed from is untimely, and we lack jurisdiction to consider its reversal. *Kuelbs I, supra*.

The remaining orders, entered on March 26, 2009, and April 2, 2009, were timely appealed. However, Donald made no argument to the circuit court that these orders were improperly entered without a hearing or that he had no notice of the orders. We do not address arguments that are raised for the first time on appeal. *Kuelbs III, supra*.



For these reasons, we affirm the circuit court’s entry of the three orders. We also take this opportunity to address an ethical matter concerning the legal representation of the ward, Kristin Kuelbs. As mentioned, Kristin was represented during the case by attorneys Justin Hurst and Donald Hill, in addition to being represented by an attorney ad litem. In an order entered on March 21, 2008, the Garland County Circuit Court relieved Hurst from representing Kristin due to his also serving as the attorney for Donald and Edwardena Hill. In orders dated December 23, 2008, and January 5, 2009, the court likewise disqualified Donald from acting as Kristin’s attorney on the ground that, as a party to the case, Donald’s representation of her violated Rule 1.7 of the Arkansas Rules of Professional Conduct. Since March 19, 2009, Ms. Kuelbs has been under the guardianship of Kimberly Hill.

Following their disqualification and the appointment of Ms. Hill as guardian, attorneys Hurst and Hill have persisted in filing legal documents on behalf of Kristin Kuelbs. The notices of appeal in this case were filed by Hurst and Hill in April and September 2009, and their appellants’ brief was filed in March 2010, all long after the disqualification orders were entered. The notices and briefs name Kristin as an appellant and purport to be filed by her legal representatives. Yet, the record reveals no orders from the circuit court reinstating Hurst or Hill and no authority granted by the guardian, Kimberly Hill, to file an appeal on the ward’s behalf.²

²On March 30, 2009, Donald filed an “Entry of Appearance” as Ms. Kuelbs’s attorney of record. There is no indication that the court approved his attempt to re-enter the case in that capacity.



Cite as 2011 Ark. App. 628

A ward who has been adjudged of unsound mind cannot file her own actions; rather, they must be brought by her guardian. *See* Ark. Code Ann. § 16-61-105(a)(1) (Repl. 2005); Ark. R. Civ. P. 17(b) (2011). Additionally, our Rules of Professional Conduct contain specific provisions regarding conflict of interest, representing clients with diminished capacity, and terminating representation. *See, e.g.*, Ark. R. Prof'l Conduct 1.7, 1.14, & 1.16 (2011). Because the acts of attorneys Hurst and Hill raise questions under these rules, we refer this matter to the Supreme Court Committee on Professional Conduct to determine whether any disciplinary action is warranted.

Appellee's motion to dismiss the appeal and for other sanctions under Rule 11 of the Arkansas Rules of Appellate Procedure—Civil is denied.

Affirmed; motion for sanctions denied.

VAUGHT, C.J., and MARTIN, J., agree.

Hurst, Morrissey & Hurst, PLLC, by: *Justin B. Hurst*; and *Donald C. Hill, Attorney at Law*, by: *Donald C. Hill*, for appellants.

Quattlebaum, Grooms, Tull & Burrow PLLC, by: *Steven W. Quattlebaum* and *Jennifer Wethington Merritt*, for appellee.