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ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-770

IN RE: THE ESTATE OF MARY ELIZABETH REIMER, incompetent

Opinion Delivered 13 JANUARY 2010

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. PGD-2004-1705]

THE HONORABLE MACKIE M. PIERCE, JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

This guardianship case brings up questions about attorney's fees and appellate jurisdiction. In 2004, the circuit court found Mary Elizabeth Reimer incompetent and appointed her husband, George, the guardian of her person. George petitioned two years later to change guardians. The circuit court appointed the Reimers' daughter, Karen Hunter, as the new guardian of Mary's person and also of Mary's estate. In 2008, Mary hired a lawyer and moved to terminate the guardianship. Mary argued that she was never notified about the proposed change of guardian or the expansion of the guardianship to include her estate. She also contended that she no longer needed a guardian.

The circuit court eventually substituted Frances Morris Finley as Mary's lawyer.

Through Finley, Mary moved for a temporary restraining order against Hunter and for an emergency hearing. The court held that hearing, denied Mary a TRO, and left Hunter as Mary's guardian. Hunter then filed an amended petition to be appointed guardian of both Mary's person and estate to cure the notice deficiencies alleged in Mary's motion to terminate.

The circuit court conducted a joint hearing on Mary's motion to terminate and Hunter's amended petition. The court concluded that Hunter's amended petition cured the notice defects. The court also left the guardianship in place with Hunter as the guardian of both Mary's person and estate. After the hearing, Finley moved for attorney's fees incurred on Mary's behalf. The circuit court denied the motion without explanation. Finley now appeals the denial of her fee motion and two other particulars about the circuit court's decision on the guardianship. Mary has not appealed.

Jurisdiction. We lack jurisdiction over two-thirds of Finley's appeal. A notice of appeal shall (among other things) "designate the judgment, decree, order or part thereof appealed from." Ark. R. App. P.–Civ. 3(e). "[A] notice of appeal must be judged by what it recites and not what it was intended to recite. It must state the parties appealing and the order appealed from with specificity, and persons not named as parties to the notice and orders not mentioned in it are not properly before the appellate court." *Ark. Dep't of Human Services v. Shipman*, 25 Ark. App. 247, 253, 756

S.W.2d 930, 933 (1988) (citations omitted). While the supreme court has relaxed this standard somewhat in recent years by (for example) overlooking obvious scrivener's errors, appealing one order does not create all-encompassing appellate jurisdiction over other unmentioned orders. *See, e.g.*, *Pro-Comp Management, Inc. v. R.K. Enterprises, LLC*, 372 Ark. 190, 194 n.3, 272 S.W.3d 91, 94 n.3 (2008).

Finley—not her client, Mary—appealed specifically from the circuit court's April 2009 order denying her attorney's fees and generally from "all of this [c]ourt's rulings that shaped the judgment." The April 2009 order consisted of two sentences denying Finley's motion for attorney's fees. Nothing else was mentioned or decided. Finley's notice perfected an appeal from the April 2009 fee order, nothing else.

Finley's inclusion of the stock language—noting an appeal from "all of this [c]ourt's rulings that shaped the judgment"—did not bring up the circuit court's earlier orders about the merits of the guardianship. Though it seems odd to call an order on a collateral issue such as fees a "judgment," the circuit court's fee order may qualify because Rule of Civil Procedure 54(a) defines a judgment as any appealable order. And the fee order was appealable. *Craig v. Carrigo*, 353 Ark. 761, 777, 121 S.W.3d 154, 164 (2003). But even assuming that the fee order qualifies as a judgment, the stock language fails to expand the scope of the issues that we can reach on appeal. The circuit court made no intermediate rulings that shaped its fee order. *Cf.* Ark. R. App.

P.–Civ. 3(a). Because Finley's notice failed to specify the two earlier orders on the merits of the guardianship now challenged, the only issue properly before us is the circuit court's denial of the fee motion.

Standing. In general, only parties to the circuit court case may appeal. *Swindle v. Benton County Circuit Court*, 363 Ark. 118, 121, 211 S.W.3d 522, 524 (2005). Our supreme court, however, has created two exceptions to this general rule. One of those is "where any appellant, though not a party, has a pecuniary interest affected by the court's disposition of the matter below." 363 Ark. at 122, 211 S.W.3d at 524.

For example, the circuit court ordered lawyer Swindle to pay $150.00 for his client's interpreter. 363 Ark. at 121, 211 S.W.3d at 523. The supreme court held that Swindle had a pecuniary interest in the payment order. Therefore the lawyer had standing to appeal as a nonparty. 363 Ark. at 122, 211 S.W.3d at 524. Arkansas law here echoes the general rule. 5 AM. JUR. 2D *Appellate Review* § 233 (2009) ("an attorney has standing to appeal a trial court's order limiting or denying attorney's fees to his or her client"); 20 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 303.21[3][a][v], 303-41–303-43 (3d ed. 2009) (several U.S. courts of appeals "have held that an attorney has standing to prosecute an appeal to recover statutory attorney's fees" because "the lawyer is frequently the only person adversely affected when attorney's fees are denied").

The circuit court's denial of Finley's fee motion certainly affected her pecuniary interest. Lawyers need to be paid. Finley's client, a ward, controlled no assets. So Finley's best option for recovering her fee was by a court order directing Mary's guardian to pay. When the circuit court denied her motion, Finley's prospects for getting paid diminished. Finley thus has standing to argue the fee issue on appeal.

One side note on standing: even had Finley appealed from the circuit court's orders on the merits of the guardianship issues, she would lack standing to pursue those issues on appeal. *Swindle*, 363 Ark. at 121–22, 211 S.W.3d at 524. The parties, not one of the lawyers, are the ones with an interest in those decisions. Of course Finley could have filed a notice of appeal on behalf of her client, Mary, on the guardianship issues. But this did not happen.

Attorney's Fees. With inapplicable exceptions, a circuit court may not award attorney's fees unless authorized by statute. *Hartsfield v. Lescher*, 104 Ark. App. 1, 3, 289 S.W.3d 123, 125 (2008); *see generally* HOWARD W. BRILL, ARKANSAS LAW OF DAMAGES §§ 11:1, 11:10, 11:11 (5th ed. 2004) (on the exceptions). We review the circuit court's fee decision for an abuse of discretion. *Hartsfield*, *supra*.

No Arkansas statute allows an award of fees under these circumstances. There is a statute allowing a guardian to recover her attorney's fees if, in the discharge of her duties, the guardian had to employ counsel. Ark. Code Ann. § 28-65-319(a)(1) (Repl.

2004). Another statute allows a lawyer to recover her fees if, upon application of the plaintiff, the circuit court appointed the lawyer to represent a person of unsound mind. Ark. Code Ann. § 16-61-109 (Repl. 2005). Finley forthrightly acknowledges that neither statute is on point. But she argues that they show the General Assembly's intent that an incompetent person should be represented by counsel and counsel should be paid. Her arguments are sound in principle. The law remains, however, that the General Assembly has not authorized attorney's fees in disputes like this one. The circuit court therefore did not abuse its discretion by denying Finley's motion. *Hartsfield*, *supra*.

Affirmed.

VAUGHT, C.J., and GLOVER, J., agree.