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ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-20-472

BARBARA ROGERS APPELLANT V. FLORIDA MARTIN RITCHIE APPELLEE	OPINION DELIVERED MAY 17, 2023 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, NINTH DIVISION [NO. 60PR-04-792] HONORABLE MARY SPENCER MCGOWAN, JUDGE REVERSED AND REMANDED

ROBERT J. GLADWIN, Judge

This case is before us after we reversed and remanded in *Rogers v. Ritchie*, 2017 Ark. App. 420, 528 S.W.3d 272 (*Rogers I*). The facts and circumstances of the case were addressed in detail in our original opinion and need not be fully restated herein. Barbara Rogers now appeals the April 15, 2020 order entered by the Pulaski County Circuit Court in which the circuit court disallowed certain expenditures claimed by Barbara, in her capacity as the guardian of the ward, her husband John Collins Rogers, now deceased, as allowable expenditures of the guardianship. She argues that the circuit court erred in disallowing (1) one-half of the expenditures for maintenance of both the household in which John and Barbara lived and their automobile; (2) all expenditures for property and casualty insurance for the residence in which the ward and guardian lived; (3) all life insurance premiums

continued during the term of the guardianship; and (4) $912.40 of storage-unit rent paid through John's business account. We find merit in Barbara's argument and reverse.

In *Rogers I*, on direct appeal, this court reversed the circuit court's ruling—that as a matter of law, funds of the guardianship could not be expended for Barbara's benefit—and remanded for the circuit court to determine whether expenditures for Barbara's benefit were reasonable, necessary, and proper for the care and maintenance of John. *See Rogers I*, 2017 Ark. App. 420, at 7, 528 S.W.3d at 276. On cross-appeal, this court reversed the circuit court's allowance of MetLife/NE Financial Life Insurance premiums as an expense of the guardianship and remanded for the circuit court to determine whether the money expended for Barbara's insurance premiums was proper for the care and maintenance of John and, if not, to reduce the allowable amount of this expenditure to account for only those premiums paid on John's behalf. *Id.* at 8–9, 528 S.W.3d at 277.

In arguments before the circuit court on January 23, 2018, counsel for Barbara—in discussing housing, utilities, and transportation—argued, "If you do not find that the amounts for Barbara were reasonable, then I think you would have to say half of these amounts would be reasonable because it's two people occupying the same house. . . . Either all of it would be allowed or half of it would be allowable would be my suggestion."

On January 7, 2020, the circuit court by letter invited counsel to submit proposed findings of fact and legal arguments for their respective clients. On February 27, by letter filed on February 28, Barbara submitted the following proposed findings of fact and legal arguments as allowed by the circuit court: "Because John and Barbara were the sole residents

of the home, it is reasonable and proper to allow 50% of the Housing and Utilities Expenditures, which is $16,948.55 as an expense of the guardianship. . . . It was reasonable and proper for [Barbara] to use the sole vehicles they owned. . . . It is reasonable and proper to allow 50% of the Transportation Expenditures, which is $7,993.50 as an expense of the guardianship. . . ."

In its April 15, 2020 order, the circuit court allowed a portion of the expenditures remanded for reconsideration and disallowed other expenditures, including any expenditures for Barbara's support or benefit as well as all of the MetLife/NE Financial Life Insurance premiums. On May 5, 2022, Barbara filed a timely notice of appeal regarding the circuit court's disallowance of certain expenditures. We find merit in Barbara's argument and reverse and remand for an order consistent with this opinion.

II. *Standard of Review*

In *Rogers I*, 2017 Ark. App. 420, at 5, 528 S.W.3d at 275, we stated:

> Probate cases are generally reviewed de novo, and this court does not reverse a circuit court unless its findings are clearly erroneous. *Seymour v. Biehslich*, 371 Ark. 359, 266 S.W.3d 722 (2007). A finding is clearly erroneous when, although there is evidence to support it, the appellate court is left on the entire evidence with the firm conviction that a mistake has been committed. *Id.* However, we give no deference to the circuit court on matters of law. *Freeman v. Rushton*, 360 Ark. 445, 202 S.W.3d 485 (2005).

III. *Discussion*

A. One-Half of Expenditures for Maintenance of Household and Automobile

In *Rogers I*, this court held that the circuit court erred as a matter of law when it disallowed these maintenance-of-household and automobile expenditures made for the benefit of Barbara without consideration and a determination of whether they were reasonable, necessary, and proper for John's care and maintenance under the rationale that reasonable and necessary expenses for the care of a guardian may be construed as proper care and maintenance of the ward. *See Stautzenberger v. Stautzenberger*, 2013 Ark. 148, at 8, 427 S.W.3d 17, at 22. We reversed and remanded the issue to the circuit court to consider whether these expenses were reasonable and necessary and could be construed to be proper for John's care and maintenance.

With respect to these expenditures, the circuit court found the expenditures claimed by Barbara "normally would be reasonable and proper for John's care and maintenance"; however, it allowed only one-half of the amounts claimed for utilities for the residence, condominium-maintenance fees, home maintenance and repairs, property taxes, and automobile expenses. In doing so, the circuit court found that in this case there were no assets readily available for Barbara's benefit because there was no evidence before it that John had any income except Social Security and few assets other than what he had taken from his judgment creditors. The circuit court also found that Barbara had agreed to pay or assume responsibility for one-half of these expenses and stated that John had no ownership interest in the home and did not drive.

Although it is undisputed that two judgments had been entered against John by disgruntled clients, Barbara argues, and we agree, that there is no evidence in the record

before us to establish that the assets of the guardianship comprised funds of John's judgment creditors or that Barbara had knowledge of John's unscrupulous business dealings.

Also in the April 15, 2020 order, in support of its disallowance of these expenditures, the circuit court found that Barbara, in the "Stipulated Objections and Responses," had offered to pay or assume responsibility for one-half of these expenditures. We disagree. Barbara's responses to Ritchie's objections to all such expenditures were that "the full amount of such expenditures were properly expenditures of the guardianship and that *alternatively*, one-half of such expenditures should be charged to the guardianship as John's share." (Emphasis added.) Barbara's position with respect to the expenditures was clearly that she was entitled to credit for all of the expenditures but that if she was not credited with all of the expenditures, she should, *at a minimum*, be credited with one-half.

Likewise, this court recognized in *Rogers I* that the circuit court should allow, at a minimum, some of the expenditures for housing, utilities, and transportation, while directing the circuit court to determine whether expenditures for Barbara's benefit were reasonable, necessary, and proper for John's care and maintenance. *Id.* at 8, 528 S.W.3d at 276–77. We hold that Barbara's including an alternative argument that she is at least entitled to one-half of the expenditures does not equate to an agreement or an admission that she offered to pay or assume responsibility for the other half; the circuit court erred in basing its decision, at least in part, on such a finding.

The circuit court also found on remand that John requires a home in which to live and transportation to his appointments related to his medical needs. In disallowing one-half

of the expenses for housing and transportation—that the circuit court specifically found would normally be reasonable and proper for John's care and maintenance—it stated as one of its reasons for doing so is that John has no ownership in the home and that John no longer drives. Because John had been the sole provider of these necessities for Barbara and himself prior to the guardianship, neither ownership of the home nor his ability to drive should have been taken into account because the expenditures constituted continued support of individuals—here, John and Barbara—who were supported by John before he became incapacitated. *See Stautzenberger*, 2013 Ark. 148, at 6–7, 427 S.W.3d at 22 (citing Ark. Code Ann. § 28-72-409(b) (Repl. 2012)).

We hold that the circuit court erred in disallowing the expenditures for Barbara's benefit that it found would normally be reasonable and proper on the basis that the guardianship estate held funds taken from John's judgment creditors. As guardian, Barbara had a duty to care for and maintain John from the guardianship estate pursuant to Ark. Code Ann. § 28-65-301(a)(1) (Repl. 2012). In doing so, Barbara is entitled to credit for expenditures, including those for her benefit, that are reasonable, necessary, and proper for John's care and maintenance. Barbara's primary duty as guardian was to care for and maintain John from the resources of his estate and, if anything is left at the termination of the guardianship, to turn these assets over to the persons entitled to them pursuant to section 28-65-301. Accordingly, we reverse the circuit court's holding regarding the previously disallowed expenditures in this category and remand for the circuit court to enter an order consistent with this opinion.

B. Disallowance of All Expenditures for Property and Casualty Insurance for the Residence

Next, Barbara argues that in its amended order, the circuit court mistakenly concluded that the Travelers Indemnity Insurance premiums in the amount of $3,617.45 were life insurance premiums and disallowed the entire amount. Paragraph 17 of the amended order states that the guardianship should not be responsible for the payment of life insurance premiums. However, schedule C of the "Second Amended Final Accounting" identified payments of $3,617.45 to Travelers Indemnity Insurance as property and casualty insurance. Additionally, the "Stipulated Objections and Responses" stated that the premiums were for property and casualty insurance on John and Barbara's personal residence. Barbara testified that she had homeowner's insurance, which she claims is the same type of expense as property taxes, maintenance, and other expenses related to maintaining the household.

Ritchie concedes that the circuit court partially erred in its disallowance of all the expenditures for property and casualty insurance for the residence in which John and Barbara lived. And although Ritchie submits that the circuit court should have assessed 50 percent of the sums spent on Travelers Indemnity Insurance premiums as property and casualty insurance, we hold that the entire amount of the premiums is allowable as an expense of the guardianship and reverse and remand on this issue as well.

C. Disallowance of All Life Insurance Premiums Continued During the Guardianship

In *Rogers I*, this court reversed the circuit court's allowance of $1,274.66 paid in MetLife/NE Financial life insurance premiums and remanded for a determination of whether the money expended for Barbara's insurance premiums was proper for John's care and maintenance. *Id.* at 9, 528 S.W.3d at 277. On remand, the circuit found that Barbara had previously testified that the MetLife policy could have been hers and consequently found that the premiums were not proper expenses for John's care and maintenance.

The record before us supports that additional evidence introduced at the hearing on remand clearly indicates that none of the MetLife/NE Financial Life premiums were for a policy on Barbara's life; accordingly, we hold that the circuit erred in disallowing those premiums on remand, which previously had been allowed, on the mistaken conclusion that the policy was on or could have been on Barbara's life. The circuit court's disallowance is reversed, and the full $1,274.66 expenditure allowed as an expense of the guardianship.

The circuit court also found that the Travelers Life Insurance premiums should be disallowed because the life insurance policies served no benefit to the guardianship or John's estate and because the guardianship had few assets other than what he had taken from his judgment creditors.

Other than the MetLife/New England Mutual Life, discussed above, there were four other policies for which Barbara paid premiums: (1) MetLife Ins. Co. of Conn. Policy ***665, issued in 1984, insuring Barbara's life; (2) Travelers Life and Annuity Policy ***690, issued in 1999, insuring Barbara's life; (3) Travelers Life and Annuity Policy ***604, issued in 1989, insuring John's life; and (4) Travelers Life and Annuity Policy ***601, issued in 1989,

insuring John's life. All these policies are referred to in both the "Second Amended Final Accounting" and the "Stipulated Objections and Responses" as Travelers Life Insurance, even though one policy—***665—was actually a MetLife Insurance Company of Connecticut policy. As reflected in the "Stipulated Objections and Responses," the premiums paid by Barbara on the two Travelers Life policies insuring John's life totaled $26,606; and the premiums on the two Travelers Life policies insuring Barbara's life totaled $3,361, for a total of $29,967.

We hold that the circuit court erred in finding that these premiums should be disallowed on the basis that there is no benefit to the guardianship or John's estate. The policies on Barbara's life would have directly benefited John had she predeceased him because he would have needed those proceeds for his care. Moreover, Barbara testified that John had purchased and maintained the life insurance policies on his life to provide for her in the event of his death and that he believed that having life insurance was absolutely necessary.

We hold that these insurance-premium expenditures should be allowed under the analysis in *Stautzenberger*, *supra*, as continuing support that had been provided by John prior to the guardianship. Accordingly, the disallowance of these life-insurance-premium payments is likewise reversed and remanded.

D. Reduction of Storage-Unit Rent
by $912.40 Paid from John's Business Account

The circuit court also found that the storage-unit rent was reasonable and proper for John's care and maintenance; however, it found that the amount allowed should be reduced by $912.40, which represented funds paid from John's business account. Barbara argues that in reducing the amount allowable, the circuit court erred because the business account was included in the "Second Amended Final Accounting."

Ritchie also concedes this point, acknowledging that the storage-unit rent of $912.40 was already included in figures that she provided in her accountings and thus should not be a further deduction. Accordingly, we reverse and remand the circuit court's disallowance of this amount as well.

We reverse and remand to the circuit court for the entry of an order consistent with this opinion.

Reversed and remanded.

KLAPPENBACH and GRUBER, JJ., agree.

McDaniel, Wolff & Benca, PLLC, by: *Rufus E. Wolff*; and *Rogers, LLP*, by: *John M. Rogers*, for appellant.

Sharp & Sharp, P.A., by: *J. Baxter Sharp III*, for appellee.