

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Sun Bank and Trust Co. v. Jones

645 So. 2d 1008 (Fla. Dist. Ct. App. 1994) · No. 93-1861 · Decided September 30, 1994

SUMMARY

The Fifth District Court of Appeal of Florida reversed an order refusing to consider objections by a deceased ward's personal representative to guardianship and attorney fees related to the guardian's proposed home plan. The court held that the personal representative had standing to raise the objections and that prior accountings and fee approvals did not foreclose review because applicable notice, audit, and approval procedures had not been followed. The court directed that a full hearing be held on the objections.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	W. Sharp; Goshorn; Peterson
JURISDICTION	Florida
DECIDED	September 30, 1994
DOCKET	93-1861
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Sun Bank, the personal representative of the deceased ward's estate, appealed an order refusing to hear its objections to guardianship and attorney fees associated with the guardian's proposed home plan.
STANDARD OF REVIEW	De novo review of legal errors; the material facts were not in dispute.
PRECEDENTIAL VALUE	Published Florida Fifth District Court of Appeal opinion; precedential unless subsequently limited or overruled.
PARTIES	Sun Bank and Trust Company, as personal representative of the estate of Donald Nichols v. John G. Jones

TOPICS

- guardianship procedure
- guardianship accounting
- guardianships
- appellate procedure
- probate procedure

PRACTICE AREAS

- Guardianship
- Probate
- Appellate procedure
- Fiduciary law

QUESTIONS PRESENTED

1. Whether the trial court's order refusing to consider objections to guardianship and attorney fees was a final, appealable order under Florida Probate Rule 5.100.
2. Whether the deceased ward's personal representative had standing to object to fees and expenditures reflected in prior guardianship accountings.
3. Whether the guardian's proposed purchase of real estate owned by the guardian and his wife was prohibited by section 744.441(14), Florida Statutes, notwithstanding possible court approval.
4. Whether the guardian and the guardian's attorney could retain or charge the ward's estate for services rendered to implement the unauthorized home plan.

HOLDINGS

1. An order denying objections to guardianship and attorney fees finally determines a party's substantial rights and is appealable under Florida Probate Rule 5.100, even though the guardianship proceeding as a whole has not been closed.
2. The personal representative of a deceased ward has standing to object to guardianship fees and expenditures related to a conflict-of-interest transaction, including fees reflected in prior accountings that were not properly approved.
3. Section 744.441(14), Florida Statutes, prohibits a plenary guardian from purchasing for the ward real estate in which the guardian has an interest; the prohibition applies even if court approval is sought.
4. A guardian and the guardian's attorney may not charge the ward's estate for unauthorized services rendered to implement a transaction prohibited by the guardianship statutes; payments made for that purpose may be recovered.

KEY QUOTATIONS

"Courts must scrupulously oversee the handling of the affairs of incompetent persons under their jurisdiction and err on the side of over-supervising rather than indifference." (645 So. 2d at 1017)

"If a transaction involves a conflict of interest between guardian and ward, it is strictly prohibited. Whether the transaction is fair to the ward or in his best interest is irrelevant." (645 So. 2d at 1019)

FACTUAL BACKGROUND

Donald Nichols, an incompetent retired military veteran, was placed in psychiatric facilities after being found mentally incompetent in connection with criminal charges. His guardian, John Jones, proposed selling Nichols property owned by Jones and his wife and constructing a home next door to Jones, with substantial guardianship funds used for the project. Although the trial court initially approved the plan, it later stayed implementation and never held the promised final hearing. Jones and his attorney nevertheless incurred and received fees connected to the plan, and Nichols's personal representative later objected to those fees after Nichols's death.

PROCEDURAL HISTORY

John Jones was appointed plenary guardian of Donald Nichols and proposed purchasing property owned by Jones and his wife and building a home for Nichols next door to Jones. The trial court initially approved the plan, later stayed its implementation, and subsequently approved annual reports and refused to consider objections to fees related to the plan. After Nichols died, Sun Bank became personal representative of his estate and objected to fees and expenditures connected to the plan. The trial court ultimately refused to hear or rehear those objections, and Sun Bank appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct a full hearing on the objections to the home-plan fees and expenditures and proceed consistently with the opinion, including determining which services and payments should be disallowed or recovered.

CASES CITED

- McGinnis v. Kanevsky, 564 So. 2d 1141 (Fla. 3d DCA 1990)
- Midland National Bank & Trust v. Comerica Trust Co., 616 So. 2d 1081, 1084 (Fla. 4th DCA 1993)
- In re Estate of Dobbins, 215 So. 2d 312, 312 (Fla. 1st DCA 1968)
- In re Guardianship of Straitz, 112 So. 2d 889, 890 (Fla. 2d DCA 1959)
- In re Guardianship of Anderson, 568 So. 2d 958, 958 (Fla. 4th DCA 1990)
- Howard v. Baumer, 519 So. 2d 679, 681 (Fla. 1st DCA), rev. denied, 528 So. 2d 1181 (Fla. 1988)
- Moore v. Moore, 577 So. 2d 1359, 1360 (Fla. 2d DCA 1991)
- Southeast Bank, N.A. v. David A. Steves, P.A., 552 So. 2d 292, 293 (Fla. 2d DCA 1989)
- Ricciardelli v. Faske, 505 So. 2d 487, 487 (Fla. 3d DCA), rev. denied, 515 So. 2d 229 (Fla. 1987)
- Williams v. Williams, 560 So. 2d 308, 310 (Fla. 1st DCA 1990)
- Nardi v. Continental National Bank, 559 So. 2d 307, 308-09 n.3 (Fla. 3d DCA 1990)
- Griffin v. Tauber-Manon Associates, Inc., 452 So. 2d 577, 578 n.2 (Fla. 3d DCA 1984)
- In re Estate of Zimbrick, 453 So. 2d 1155, 1157-59 (Fla. 4th DCA 1984)
- In re Estate of Beeman, 391 So. 2d 276, 278 (Fla. 4th DCA 1980)
- In re Estate of Feldstein, 292 So. 2d 404 (Fla. 3d DCA 1974)
- In re Guardianship of Lawrence v. Norris, 563 So. 2d 195 (Fla. 1st DCA 1990)
- Allen v. City of St. Augustine, 500 So. 2d 206 (Fla. 1st DCA 1986), rev. denied, 504 So. 2d 766 (Fla. 1987)
- In re Guardianship of White, 140 So. 2d 311 (Fla. 1st DCA 1962)
- Webster & Moorefield, P.A. v. City National Bank of Miami, 453 So. 2d 441 (Fla. 3d DCA 1984)
- Baskin v. Guardianship of Baskin, 535 So. 2d 306 (Fla. 2d DCA 1988), rev. denied, 544 So. 2d 199 (Fla. 1989)
- In re Nusbaum's Guardianship, 152 Fla. 31, 10 So. 2d 661 (1942)

- Fitts v. The Guardianship Estates of Campbell, 466 So. 2d 431 (Fla. 5th DCA 1985)
- American Surety Co. v. Andrews, 152 Fla. 638, 12 So. 2d 599 (1943)
- Firmin v. Sanborn, 119 Fla. 396, 161 So. 555 (1935)
- Estate of Ganier, 402 So. 2d 418 (Fla. 5th DCA 1981), quashed on other grounds, 418 So. 2d 256 (Fla. 1982)
- Beck v. Beck, Beck v. Beck, 383 So. 2d 268 (Fla. 3d DCA 1980)
- Cohen v. Cohen, 346 So. 2d 1047 (Fla. 2d DCA 1977)

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