

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Acuna v. Dresner

41 So. 3d 997 (Fla. 3d DCA 2010) · No. Nos. 3D09-2031, 3D09-2982 · Decided August 4, 2010

SUMMARY

The Florida Third District Court of Appeal held that a ward's declaration naming preneed guardians creates a rebuttable statutory presumption favoring their appointment. The probate court abused its discretion by appointing an accountant as plenary guardian without substantial competent evidence overcoming that presumption and by misinterpreting the declaration as requiring unanimity among the ward's daughters; the court affirmed the attorney-fee and judicial-disqualification rulings.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Lagoa, J.; Gersten, J.; Shepherd, J.
JURISDICTION	Florida
DECIDED	August 4, 2010
DOCKET	Nos. 3D09-2031, 3D09-2982
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The appellants appealed probate-court orders appointing Jack Dresner as plenary guardian, awarding attorney's fees to the attorney ad litem, and denying a motion to disqualify the trial judge.
STANDARD OF REVIEW	Abuse of discretion for the appointment of a guardian; the presumption favoring a designated preneed guardian may be overcome only by substantial, competent evidence.
PRECEDENTIAL VALUE	Published Florida Third District Court of Appeal opinion; precedential within the applicable Florida appellate hierarchy.
PARTIES	Marianne Magill Acuna, Marilyn Magill v. Jack Dresner, Hung V. Nguyen

TOPICS

guardianships

guardianship procedure

appellate procedure

statutory interpretation

probate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the probate court properly appointed Dresner as plenary guardian despite Shirley's declaration naming her daughters as preneed guardians.
2. Whether the evidence was sufficient to rebut the statutory presumption favoring the designated preneed guardians.
3. Whether the appellants had standing to challenge the attorney ad litem's fee award.
4. Whether the motion to disqualify the trial judge was timely.

HOLDINGS

1. When a ward has designated a preneed guardian in a written declaration, the statutory rebuttable presumption favoring that guardian can be overcome only by substantial, competent evidence that the designee is unqualified, unwilling, unable, or otherwise unsuitable to serve.
2. The declaration did not require the three daughters to act unanimously in order to be appointed or serve as guardians; it permitted guardianship decisions to be made by majority rule.
3. The probate court abused its discretion by appointing Dresner as plenary guardian because the record lacked substantial, competent evidence overcoming the statutory presumption in favor of Shirley's designated preneed guardians.
4. The appellants lacked standing to challenge the order awarding attorney's fees to the attorney ad litem because they had not filed a written request for notice under Florida Probate Rule 5.060.
5. The motion to disqualify was properly denied as untimely because it was not filed within the reasonable period, not exceeding ten days, after discovery of the facts supporting disqualification.

KEY QUOTATIONS

"Where a ward's preference as to the appointment of a guardian is capable of being known, that intent is the polestar to guide probate judges in the appointment of their guardians." (41 So. 3d at 998)

"Because the Declaration does not require unanimity among the daughters in order to be appointed or serve as guardian, this conclusion was also erroneous." (41 So. 3d at 1000)

FACTUAL BACKGROUND

Shirley Magill executed a declaration naming her three daughters, together or the survivor of them, as guardians of her person and property if she became incapacitated, and naming her son-in-law as an alternate if none of the daughters could or would serve. After Shirley was determined to be incapacitated, her daughters disagreed about whether she should rotate among their homes or remain in her home with medical aides. The probate court appointed Shirley's longtime accountant, Jack Dresner, as plenary guardian because it believed the declaration required the daughters to act unanimously. The declaration was not filed with the probate court until eight days after the guardianship hearing.

PROCEDURAL HISTORY

Shirley Magill executed a declaration naming her three daughters, or the survivor of them, as preneed guardians. After a petition to determine incapacity and an amended request for plenary guardianship, the probate court found Shirley incapacitated and appointed Dresner, her longtime accountant, as plenary guardian, believing the declaration required unanimity among the daughters. The court also awarded attorney's fees to attorney ad litem Hung Nguyen and denied the appellants' disqualification motion. The Third District affirmed the fee and disqualification orders, but reversed the guardianship appointment and remanded with directions to appoint the three daughters as plenary guardians.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The probate court was directed to appoint all three daughters, Marianne Magill Acuna, Marilyn Magill, and Maureen Tew, as Shirley's plenary guardians. The orders awarding attorney's fees to Nguyen and denying disqualification were affirmed.

CASES CITED

- Estate of Salley v. Comprehensive Pers. Care Servs., Inc., 742 So. 2d 268 (Fla. 3d DCA 1997)
- Davis v. King, 686 So. 2d 763 (Fla. 5th DCA 1997)
- Miller v. Goodell, 958 So. 2d 952 (Fla. 4th DCA 2007)
- Treloar v. Smith, 791 So. 2d 1195 (Fla. 5th DCA 2001)
- Ahlman v. Wolf, 413 So. 2d 787 (Fla. 3d DCA 1982)
- Morris v. Knight, 1 So. 3d 1236 (Fla. 4th DCA 2009)
- In re Guardianship of Sitter, 779 So. 2d 346 (Fla. 2d DCA 2000)
- William F. Hayes, Jr., et al. v. Guardianship of Mae E. Thompson, etc., Hayes v. Guardianship of Thompson, 952 So. 2d 498 (Fla. 2006)
- J.M.P.U. v. Department of Children & Family Services, 862 So. 2d 752 (Fla. 3d DCA 2003)