

THIRD DISTRICT COURT OF APPEAL, STATE OF FLORIDA

Ursula Q. Silveira v. Guardianship of Ana Maria Quiroga

Ursula Q. Silveira v. Guardianship of Ana Maria Quiroga, 156 So. 3d 1120 (Fla. 3d DCA 2015) (Fla. 3d DCA 2015) · No. 3D13-2302

SUMMARY

The Third District Court of Appeal treated an appeal as a petition for certiorari and quashed orders requiring a non-guardian relative to retain counsel and barring her pro se filings. The court held that Florida Probate Rule 5.030(a)'s attorney requirement applies only to persons who have been appointed as guardian, not to a relative seeking appointment. While a trial court has inherent authority to restrict abusive litigants, the record did not show the level of abuse needed to justify a complete ban on pro se pleadings.

CASE DETAILS

COURT	Third District Court of Appeal, State of Florida
WRITING FOR THE COURT	Rothenberg; Fernandez; Logue
JURISDICTION	Florida
DOCKET	3D13-2302
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from orders of the Circuit Court for Miami-Dade County, treated as a petition for writ of certiorari
PRECEDENTIAL VALUE	published
PARTIES	Ursula Q. Silveira v. Guardianship of Ana Maria Quiroga

TOPICS

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PRACTICE AREAS

[Guardianship and Conservatorship](#)[Appellate Procedure](#)[Civil Procedure](#)

QUESTIONS PRESENTED

1. Whether the trial court erred by requiring Ms. Silveira to retain an attorney to file a petition for appointment of guardian based on Florida Probate Rule 5.030(a).

2. Whether the trial court erred by directing the clerk not to accept further pro se pleadings from Ms. Silveira.

HOLDINGS

1. Florida Probate Rule 5.030(a) requiring representation by an attorney applies only to persons who have been appointed as guardian by the court; a relative who has not been appointed guardian is not a 'guardian' under the rule and therefore cannot be precluded from filing pro se documents on that basis.
2. A trial court has inherent authority to prevent abusive litigants from filing frivolous petitions and may require the litigant to obtain counsel, but the record did not show Ms. Silveira's actions had escalated to a level warranting a complete ban on pro se filings.

KEY QUOTATIONS

“In GPDC's memorandum of points and authority in support of its position, GPDC asserts that pursuant to Florida Probate Rule 5.030(a), Ms. Silveira cannot file any pro se motions or pleadings because guardians 'shall be represented by an attorney admitted to practice in Florida.' GPDC's reliance on rule 5.030(a), however, is misplaced because Ms. Silveira is not a 'guardian' as defined in the Florida Probate Rules, see Fla. Prob. R. 5.015(b)(6) (defining a 'guardian' as 'a person appointed pursuant to chapter 744, Florida Statutes, or a guardian advocate unless a rule indicates otherwise'), or in the Florida Guardianship Law, see §744.102(9) (defining a 'guardian' as 'a person who has been appointed by the court to act on behalf of a ward's person or property, or both').” (at 6-7)

“A trial court, however, does have the inherent authority to prevent 'abusive litigants from continuously filing frivolous petitions' See Sibley v. Sibley, 885 So. 2d 980, 985 (Fla. 3d DCA 2004) (quoting Rivera v. State, 728 So. 2d 1165, 1166 (Fla. 1998)).” (at 7)

“We also take this opportunity to explain to Ms. Silveira that pro se litigants are not held to a 'lesser standard than a reasonably competent attorney.' See Kohn v. City of Miami Beach, 611 So. 2d 538, 539 (Fla. 3d DCA 1992).” (at 8)

FACTUAL BACKGROUND

Ana Maria Quiroga was the subject of an incapacity proceeding initiated by the CEO of Kindred Hospital, who alleged that Ana Maria's social security funds were not being used in her best interests. A psychiatric evaluation indicated Ana Maria could no longer make her own health care decisions and wanted decisions made by her sister, Ursula Silveira, or another family member. The examining committee unanimously found Ana Maria incapacitated and recommended a plenary guardian. Despite Ms. Silveira's expressed willingness to serve as guardian, the trial court appointed the Guardianship Program of Dade County, a public guardian.

PROCEDURAL HISTORY

A petition to determine incapacity of Ana Maria Quiroga was filed by the CEO of Kindred Hospital. The trial court appointed an examining committee and counsel for the alleged incapacitated person. A hearing was held, the court found Ana Maria totally incapacitated, and appointed the Guardianship Program of Dade County (GPDC) as plenary guardian. Ana Maria's sister, Ursula Q. Silveira, filed numerous pro se motions seeking to

remove GPDC and to be appointed guardian. The trial court entered orders prohibiting Ms. Silveira from representing herself as guardian, requiring her to retain counsel to file a petition, and directing the clerk not to accept further pro se filings from her. Ms. Silveira appealed these orders.

DISPOSITION

other

REMAND INSTRUCTIONS

Quashed the portion of the August 9, 2013 order requiring Ms. Silveira to retain an attorney to file a petition for appointment of guardian, and quashed the portion of the September 27, 2013 order directing the clerk not to accept further filings from Ms. Silveira. The portion of the August 9 order prohibiting Ms. Silveira from holding herself out as guardian was not quashed.

CASES CITED

- Sibley v. Sibley, 885 So. 2d 980 (Fla. 3d DCA 2004)
- Rivera v. State, 728 So. 2d 1165 (Fla. 1998)
- Kohn v. City of Miami Beach, 611 So. 2d 538 (Fla. 3d DCA 1992)