

NEBRASKA SUPREME COURT

In re Guardianship & Conservatorship of J.F.

307 Neb. 452 (2020) · No. No. S-19-1123 · Decided October 9, 2020

SUMMARY

The Nebraska Supreme Court affirmed an order requiring the petitioner in a minor’s conservatorship proceeding to pay a guardian ad litem’s reasonable fees and costs. The court held that Nebraska Revised Statute § 30-2643 authorized assessment of those fees against the petitioner in a conservatorship proceeding, while § 30-2620.01 did not apply to a minor guardianship proceeding. The court also rejected the argument that § 30-2643 had been implicitly repealed or amended by § 30-4210.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	October 9, 2020
DOCKET	No. S-19-1123
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gerald F. appealed the Holt County Court's order requiring him to pay guardian ad litem fees and costs in a guardianship and conservatorship proceeding involving a minor child.
STANDARD OF REVIEW	Probate cases are reviewed for error appearing on the record made in the county court. The court determines whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. The allowance, amount, and allocation of guardian ad litem fees are reviewed for abuse of discretion, while statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Gerald F. v. Misty B.

TOPICS

conservatorship

guardianship procedure

guardian ad litem

statutory interpretation

appellate procedure

PRACTICE AREAS

probate

guardianships

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QUESTIONS PRESENTED

1. Whether the county court had statutory authority to assess guardian ad litem fees and costs against Gerald in a proceeding involving both a minor guardianship and a conservatorship.
2. Whether Neb. Rev. Stat. § 30-2620.01 authorized assessment of the GAL's fees in a guardianship proceeding for a minor.
3. Whether Neb. Rev. Stat. § 30-2643 had been implicitly repealed or amended by Neb. Rev. Stat. § 30-4210.
4. Whether Gerald preserved objections concerning the reasonableness of the fees and notice of the fee hearing.

HOLDINGS

1. Neb. Rev. Stat. § 30-2620.01 does not provide for an award of guardian ad litem fees and costs in a guardianship proceeding for a minor.
2. Neb. Rev. Stat. § 30-2643 authorized the county court to assess the GAL's reasonable fees and costs against Gerald as the petitioner in the conservatorship proceeding.
3. Neb. Rev. Stat. § 30-2643 was not implicitly repealed or amended by § 30-4210 because the statutes apply in distinct circumstances and are not plainly and unavoidably repugnant.
4. The court would not consider objections that were not presented to or passed upon by the trial court, or that were not specifically assigned and argued on appeal.

KEY QUOTATIONS

“In a guardianship proceeding for a minor, no statute or recognized uniform course of procedure permits a court to assess the fees of an appointed person against a ward’s estate, a county, or a petitioner.” (464)

“In a conservatorship proceeding for a protected person, the court is statutorily authorized to assess the fees of an appointed person to the estate of the protected person if the protected person possesses an estate or, if not, the county in which the proceedings are brought or the petitioner.” (464)

FACTUAL BACKGROUND

Gerald F. petitioned to be appointed guardian and conservator of J.F., a minor child whom he had raised as his son despite a paternity test showing he was not the biological father. After a domestic abuse protection order created a conflict concerning the child's representation, the county court appointed a guardian ad litem. The court granted Gerald's petition and later approved the GAL's application for \$10,665.57 in fees and costs, finding that J.F. had no estate and ordering Gerald, rather than Holt County, to pay as the petitioner.

PROCEDURAL HISTORY

Gerald petitioned the Holt County Court to be appointed guardian and conservator of J.F. The county court appointed a guardian ad litem, ultimately granted Gerald's petition, and ordered payment of the GAL's fees and costs by the ward's estate if available or by Gerald as petitioner. After determining that J.F. had no estate and denying Gerald's motion to set aside, the county court again ordered Gerald to pay the fees. The Nebraska Supreme Court moved the appeal to its docket and affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Guardianship & Conservatorship of Karin P., 271 Neb. 917, 716 N.W.2d 681 (2006)
- In re Estate of Hutton, 306 Neb. 579, 946 N.W.2d 669 (2020)
- In re Adoption of Kailynn D., 273 Neb. 849, 733 N.W.2d 856 (2007)
- In re Guardianship & Conservatorship of Alice H., 303 Neb. 235, 927 N.W.2d 787 (2019)
- In re Guardianship of Brydon P., 286 Neb. 661, 838 N.W.2d 262 (2013)
- Premium Farms v. County of Holt, 263 Neb. 415, 640 N.W.2d 633 (2002)
- State v. Thompson, 294 Neb. 197, 881 N.W.2d 609 (2016)
- Bergan Mercy Health Sys. v. Haven, 260 Neb. 846, 620 N.W.2d 339 (2000)
- State v. Thomas, 303 Neb. 964, 932 N.W.2d 713 (2019)
- In re Guardianship & Conservatorship of Forster, 22 Neb. Ct. App. 478, 856 N.W.2d 134 (2014)
- In re Guardianship & Conservatorship of Donley, 262 Neb. 282, 631 N.W.2d 839 (2001)