

# FLORIDA SECOND DISTRICT COURT OF APPEAL

## Yazdzik v. Scott

129 So. 3d 482 (Fla. Dist. Ct. App. 2014) · Decided January 8, 2014

### SUMMARY

The Florida Second District Court of Appeal held that attorney’s fees and examining committee fees in an involuntary guardianship proceeding could not be assessed against the alleged incapacitated person’s estate when the petition was dismissed before incapacity was determined and no guardian was appointed. The court concluded that sections 744.108 and 744.331, Florida Statutes, did not authorize such fees absent establishment of a guardianship, and reversed the circuit court’s fee awards.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Florida Second District Court of Appeal                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Black; Altenbernd; Wallace                                                                                                                                                                                                                                    |
| JURISDICTION          | Florida                                                                                                                                                                                                                                                       |
| DECIDED               | January 8, 2014                                                                                                                                                                                                                                               |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | The personal representative of the estate appealed amended circuit-court orders awarding attorney's fees and examining-committee fees from the estate in an involuntary incapacity proceeding that was dismissed after the alleged incapacitated person died. |
| STANDARD OF REVIEW    | De novo review applies to the circuit court's rulings on entitlement to fees based on its interpretation of relevant statutes.                                                                                                                                |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                |
| PARTIES               | Marion Yazdzik, personal representative of the estate of Mary Klatthaar v. Mark Scott, Michael J. McGarry, Pamela D. Keller, members of the examining committee                                                                                               |

### TOPICS

guardianship procedure

guardianships

statutory interpretation

plain meaning rule

appellate procedure

### PRACTICE AREAS

guardianship

probate

statutory interpretation

appellate procedure

## QUESTIONS PRESENTED

1. Whether sections 744.331 and 744.108, Florida Statutes, authorize attorney's fees, examining-committee fees, and costs to be paid from the estate of an alleged incapacitated person when the incapacity petition is dismissed before incapacity is determined and no guardianship is established.
2. Whether the dismissal of the incapacity petition following the alleged incapacitated person's death creates a distinction permitting assessment of fees against the estate.

## HOLDINGS

1. Section 744.331 does not authorize attorney's fees and examining-committee fees to be paid from the alleged incapacitated person's estate when the petition is dismissed before incapacity is determined and no guardian is appointed. If a petition is dismissed, fees and costs may be assessed against the petitioner under section 744.331(7)(c) only when the court finds that the petition was filed in bad faith.
2. Section 744.108 does not authorize attorney's fees and costs from the estate of an alleged incapacitated person when no guardianship has been established and no guardian has been appointed.
3. The court could not extend the unambiguous statutory provisions to impose fee liability on the alleged incapacitated person or the estate; allocating responsibility for fees in this circumstance is for the legislature.

## KEY QUOTATIONS

*“Because sections 744.108 and 744.331 do not contemplate the payment of fees and costs from an alleged incapacitated person where a guardianship is not established, we agree and reverse.” (484)*

*“Chapter 744 simply does not contemplate the payment of fees and costs from an alleged incapacitated person absent the establishment of a guardianship.” (486)*

## FACTUAL BACKGROUND

Mark Scott initiated an involuntary guardianship proceeding seeking a determination that Mary Klatthaar was incapacitated and seeking an emergency temporary guardian. The circuit court appointed Michael McGarry to represent Klatthaar and appointed a three-member examining committee, but Klatthaar died before incapacity was determined and before a guardian was appointed. After the proceeding was dismissed, the circuit court ordered attorney's fees and examining-committee fees paid from Klatthaar's estate, even though the petition was not found to have been filed in bad faith.

## PROCEDURAL HISTORY

Mark Scott filed a petition to determine incapacity and a petition for appointment of an emergency temporary guardian for his aunt, Mary Klatthaar. The circuit court appointed counsel for Klatthaar and a three-member examining committee, but denied the emergency-guardian petition. Klatthaar died before a final incapacity determination, and the incapacity petition was dismissed. The circuit court later awarded fees and costs to appointed counsel and the examining committee, payable from Klatthaar's estate; the Second District reversed.

## DISPOSITION

reversed

#### CASES CITED

- Thorpe v. Myers, 67 So. 3d 338 (Fla. 2d DCA 2011)
- In re Guardianship of J.D.S., 864 So. 2d 534 (Fla. 5th DCA 2004)
- Holly v. Auld, 450 So. 2d 217 (Fla. 1984)
- Rothman v. Rothman, 93 So. 3d 1052 (Fla. 4th DCA 2012)
- In re Keene, 343 So. 2d 916 (Fla. 4th DCA 1977)
- Ehrlich v. Allen, 10 So. 3d 1210 (Fla. 4th DCA 2009)
- Ehrlich v. Severson, 985 So. 2d 639 (Fla. 4th DCA 2008)
- Faulkner v. Faulkner, 65 So. 3d 1167 (Fla. 1st DCA 2011)
- Levine v. Levine, 4 So. 3d 730 (Fla. 5th DCA 2009)
- State Farm Fire & Cas. Co. v. Palma, 629 So. 2d 830 (Fla. 1993)
- In re Guardianship of Cosio, 753 So. 2d 134 (Fla. 2d DCA 2000)
- In re Guardianship of Kesish, 98 So. 3d 183 (Fla. 2d DCA 2012)
- In re Guardianship of Ansley, 94 So. 3d 711 (Fla. 2d DCA 2012)
- King v. Fergeson, Shaw, Keyser, Baron, & Tirabassi, P.A., 862 So. 2d 873 (Fla. 2d DCA 2003)
- In re Guardianship of Dean, 319 So. 2d 589 (Fla. 2d DCA 1975)
- Am. Bankers Life Assurance Co. of Fla. v. Williams, 212 So. 2d 777 (Fla. 1st DCA 1968)