

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Drelich v. Guardianship of Drelich

201 So. 3d 15 · Decided October 16, 2013

SUMMARY

The Florida Third District Court of Appeal held that a husband's request for attorney's fees and costs under section 744.331(7)(c), Florida Statutes, warranted an evidentiary hearing after his wife's guardianship petition was dismissed. The court concluded that the record supported allegations that the petition may have been filed in bad faith and that fees associated with defending the guardianship proceeding could be recoverable. The case was remanded for findings regarding bad faith.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	SALTER, J.; Emas; Logue; Salter
JURISDICTION	Florida
DECIDED	October 16, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The husband appealed the guardianship court's denial of his motion for attorney's fees and costs after the wife stipulated to dismissal of her petition to determine him incapacitated.
STANDARD OF REVIEW	De novo review of the legal defense concerning the application of section 744.331(7)(c).
PRECEDENTIAL VALUE	Published opinion
PARTIES	Husband v. Wife

TOPICS

guardianship procedure

guardianships

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PRACTICE AREAS

Guardianship

Family law

Attorney's fees and costs

Appellate procedure

QUESTIONS PRESENTED

1. Whether section 744.331(7)(c), Florida Statutes, permits an award of attorney's fees and costs to the allegedly incapacitated person when a guardianship petition is dismissed and the court finds that the petitioner acted in bad faith.
2. Whether the husband's motion for attorney's fees and costs warranted an evidentiary hearing based on the alleged omissions, disproven allegations, and circumstances surrounding the wife's guardianship petition.

HOLDINGS

1. When a petition to determine incapacity is dismissed, section 744.331(7)(c) permits the court to assess the costs and attorney's fees of the proceeding against the petitioner if the petition was filed in bad faith, without restricting recovery to fees incurred by court-appointed counsel or excluding fees incurred by the allegedly incapacitated person's own attorney.
2. A motion for attorney's fees and costs under section 744.331(7)(c) warrants an evidentiary hearing when the record presents substantial indications that the guardianship petition was filed in bad faith.

KEY QUOTATIONS

“Her effort to delay the dissolution proceeding brought by her husband (for three years) and her refusal to allow her husband to continue his occupancy in his condominium unit are so sharply inconsistent with her request to become his guardian that the husband’s motion for fees and costs warranted an evidentiary hearing rather than summary denial.” (201 So. 3d at 17)

“This subsection plainly shifts the burden of footing the costs and attorney’s fees of the proceeding, without restrictions, onto the petitioner who pursues a guardianship in bad faith.” (201 So. 3d at 17)

FACTUAL BACKGROUND

The 82-year-old husband filed for dissolution of marriage in January 2013. The wife then sought to stay the dissolution proceeding for three years based on alleged incapacity and filed a guardianship petition seeking appointment as guardian, but the petition omitted the pending dissolution proceeding and alleged that the husband had dementia. Medical and psychological examiners unanimously concluded that the husband was competent, after which the wife stipulated to dismissal. The husband sought attorney's fees and costs, alleging that the petition had been filed in bad faith.

PROCEDURAL HISTORY

The husband filed a dissolution petition, after which the wife sought to stay the dissolution proceeding and filed a guardianship petition alleging that the husband was incapacitated. The wife sought appointment as guardian despite having pending dissolution litigation against the husband and disclosing agreements under which she might be his creditor. Three members of the examining committee unanimously found the husband competent, and the wife stipulated to dismissal of the guardianship petition. The guardianship court denied the husband's request for fees and costs under section 744.331(7)(c), leading to this appeal.

DISPOSITION

REMAND INSTRUCTIONS

Conduct an evidentiary hearing and make findings regarding whether the guardianship petition was filed in bad faith. If the trial judge finds bad faith, the court may award the husband attorney's fees and costs as provided by section 744.331(7)(c).

CASES CITED

- Maddox v. State, 923 So. 2d 442, 445 (Fla. 2006)

OPINION

SALTER, J.

SALTER, J. The issue in this appeal is whether a petition to determine that the appellant/husband is incapacitated—filed by his soon-to-be-former wife after the appellant commenced a dissolution proceeding, and in which the wife sought to be appointed guardian—may warrant an attorney's fee award against the wife under section 744.331(7), Florida Statutes (2013).

On the unique and striking record presented, we reverse the order below denying the husband's motion for such fees and remand the case for further proceedings. I. The Parties and the Two Proceedings The husband and wife were married in New Jersey in 2005.

The parties had a prenuptial and a post-nuptial agreement. In January 2013, the 82 year-old appellant filed a verified petition for the dissolution of the marriage. The husband alleged that the parties separated earlier that month and that the marriage was irretrievably broken. Two weeks later, the wife filed a verified motion to stay or abate the dissolution proceeding for three years pursuant to section 61.052(l)(b), Florida Statutes (2013).¹ The wife alleged that her husband “is incapacitated according to the provisions of F.S.

744.331,” and that she anticipated filing a guardianship petition “shortly” alleging that the husband is incapacitated. She sought attorney's fees and costs because of the husband's, or his representatives', “bad faith in bringing these divorce proceeding while knowing that Husband suffers from Dementia, his Neurologist and his family are aware of this and the result of going forward in this litigation is being done in Bad Faith [sic].” “Shortly” turned out to be about two months later, two days before the family court was to conduct an evidentiary hearing on the wife's motion to stay or abate the dissolution case and on the husband's motion to be restored to the possession of his condominium and automobile.² In April 2013, the wife filed and served a petition in the mental health section of the probate division to determine the husband to be an incapacitated person, and an application for appointment as his guardian.

The petition disclosed that she “has a Prenuptial Agreement, a Post Nuptial Agreement and one additional Amendment to her Post Nuptial Agreement with the incapacitated person. Thus she may be a creditor of Ward.” Incredibly, however, neither the wife’s petition nor the application to be appointed guardian disclosed that the wife was the respondent in a pending dissolution of marriage proceeding brought by her allegedly-incapacitated husband.

The husband denied the allegations in the wife’s petition for guardianship and moved for his attorney’s fees and costs in responding to a baseless petition brought in bad faith. His answer and his response to the wife’s motion to stay or abate the *17dissolution proceedings included various recent medical records indicating that the husband was depressed but completely capable of making his own decisions.

Despite these disclosures, the wife persisted. The family court denied the wife’s motion to stay or abate the dissolution proceeding, and it granted the husband’s motion to be restored to possession of the condominium unit and automobile. While recognizing that the judge assigned to the guardianship case would ultimately determine the husband’s competency, the family court judge observed on the record, “I have heard this guy testify at least an hour or more.

He may be the smartest, sharpest person in this courtroom right now.” At the end of April 2013, two physicians and a Ph.D. psychologist (the mental health examining committee appointed by the guardianship division) interviewed the husband and unanimously reported that he was competent to exercise all his rights, recommending that there should be no guardianship.

The wife then stipulated to the entry of an order dismissing the petition for guardianship.³ The husband moved for a limited rehearing, requesting the guardianship court to grant the husband’s motion for attorney’s fees and costs under section 744.331(7)(c), based on the wife’s bad faith.

The guardianship court denied the motion, and this appeal followed. II. Analysis The wife’s verified petition to determine incapacity and application to be appointed as guardian⁴ were fraught with omissions of material fact and with allegations (for example, that her husband had been diagnosed with dementia) that were resoundingly disproven. Her effort to delay the dissolution proceeding brought by her husband (for three years) and her refusal to allow her husband to continue his occupancy in his condominium unit are so sharply inconsistent with her request to become his guardian that the husband’s motion for fees and costs warranted an evidentiary hearing rather than summary denial.⁵ Section 744.331(7), entitled “Fees,” first directs the court to award reasonable fees to the examining committee and any court-appointed attorney in a procedure to determine incapacity. § 744.331(7)(a), Fla. Stat. (2013).

Subsection (7)(c) then-provides that “[i]f the petition is dismissed, costs and attorney’s fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith.” (Emphasis added). This subsection plainly shifts the burden of footing the costs and

attorney's fees of the proceeding, without restrictions, onto the petitioner who pursues a guardianship in bad faith.

The legal defense proffered by the wife in this appeal is a narrow issue of law *18which is reviewed de novo.⁶ The husband's attorney in the family court proceeding worked with the court-appointed attorney in the guardianship to establish that the wife's petition for incapacity was meritless and misleading.

The recovery of those fees as "costs and attorney's fees of the proceeding" involves nothing more than the application of an unambiguous statute. *Maddox v. State*, 923 So.2d 442, 445 (Fla.2006). The husband's attorney's fees and costs relating exclusively to the dissolution proceeding have not been sought, and would not be recoverable, as an incident of the dismissal of the guardianship petition.

III. Conclusion We reverse the order denying the husband's motion for reconsideration of his pending motion for attorney's fees and costs, and we remand for an evidentiary hearing and findings regarding the issue of bad faith. If the trial judge determines that the petition was filed in bad faith, the court may award the husband his attorney's fees and costs as provided by the statute..

Section 61.052(1)(b) provides that the mental incapacity of a spouse is an alternative basis for dissolution of marriage, provided "the party alleged to be incapacitated shall have been adjudged incapacitated according to the provisions of s. 744.331 for a preceding period of at least 3 years."

The wife had locked the husband out of the condominium unit, titled in his name, and had also refused to give him his keys to his car, since January 2013.. The wife's stipulation for dismissal of the petition after a review of the unanimous reports of the examining committee members is not preclusive on the question of bad faith. Section 744.331(7)(c) addresses bad faith at the point of the filing of the petition..

Though verified by the wife, these pleadings were filed by her attorney.. The husband's allegations regarding the wife's bad faith are preliminarily supported by the wife's own sworn (but disproven) written allegations and her actions, none of which are disputed here. Rather than attempt to explain or dispute those allegations and actions, the appellee/wife argues here that the husband's attorney (as opposed to the separate attorney ad litem appointed by the court to represent the allegedly-incapacitated person) should not be compensated for his work in defending his client, the husband.

As explained here, we reject that argument.. This issue is also a question of first impression.