

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

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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

reversed_and_remanded

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)

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