

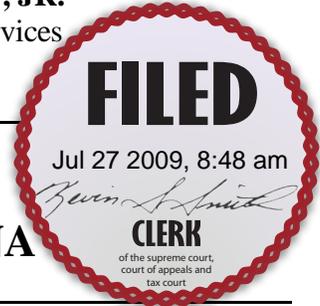
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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE GUARDIANSHIP OF)
CLARENCE PONDER)
)
CHARLOTTE PONDER,)
)
Appellant/Petitioner,)
)
vs.)
)
CLARENCE PONDER,)
)
Appellee/Respondent.)

No. 32A01-0903-CV-132

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Robert W. Freese, Judge
Cause No. 32D01-0810-GU-91

July 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Charlotte Ponder (“Wife”) appeals the trial court’s dismissal of her petition for contempt. The dispositive issue is whether the trial court erred in issuing the dismissal order. We affirm.

In October 2008, Clarence Ponder (“Husband”) was hospitalized for treatment of a fractured arm. He also suffered from advanced stage prostate cancer. Following his October 15, 2008 discharge, he chose to reside with his daughter from a previous marriage, Connie Kemp (“Daughter”). On October 16, 2008, Wife filed an emergency petition for temporary guardianship over Husband’s person and estate. On October 20, 2008, the clerk issued letters of temporary guardianship, and Thomas A. Deal (“Husband’s counsel”) entered an appearance on Husband’s behalf. On October 21, 2008, Husband signed a slip that was used to withdraw \$10,000.00 from a checking account he held jointly with Wife. On October 22, 2008, the trial court held an attorneys’ conference and issued the following order:

Petitioner ordered to obtain a statement from Doctor as to [Husband’s] competency. Guardians letters are [s]uspended pending submission of Doctor’s report. Doctor is ordered to provide a copy of the report to the Court, [Wife’s counsel] and [Husband’s counsel]. No assets of [Husband] are to be spent pending further order of the court.

Appellant’s App. at 3.

In accordance with the October 22, 2008 order, board certified psychiatrist Dr. Dale E. Theobald examined Husband and filed a report with the court on October 22-23, 2008. He reported that Husband was alert, oriented to person, place, month, and year, was aware of important current events, and could perform simple math. Appellant’s App. at 20. He found Husband’s “thought processes to be logical and sequential” and “his mental status to be

normal throughout.” *Id.* Husband’s oncologist, Dr. David M. Loesch, also submitted a letter indicating that during his October visits, Husband “appeared to be of sound mind and able to make decisions regarding his physical person.” *Id.* at 16. As part of the discharge summary, Dr. Loesch indicated that on October 14, 2008, he examined Husband physically and mentally and found him to be “oriented to person, place, and time,” aware of the doctor’s identity and longstanding relationship with him, and aware of his current situation and basic facts such as the President’s and doctor’s names. *Id.* at 19. He also reported that Husband was able to articulate reasons for wanting to go home with Daughter and concluded, “I believe this gentleman is competent.” *Id.*

On October 27, 2008, Wife filed a motion to dismiss the emergency petition for temporary guardianship. That same day, Husband signed a quitclaim deed granting to Daughter his interest in a parcel of real property he owned with Wife.¹ On October 31, 2008, Daughter, acting under Husband’s power of attorney, withdrew \$2,000.00 from Husband and Wife’s joint checking account.² On November 7, 2008, the trial court issued an order granting the motion to dismiss the guardianship action.

On December 10, 2008, Husband died. On January 5, 2009, Wife filed a petition for contempt against Daughter, seeking to set aside the quitclaim deed and to force the return of

¹ Wife’s contempt petition indicates that there is some question as to whether Husband and Wife owned the property as tenants by the entireties or as tenants in common as of the date of Husband’s transfer. *See* Appellant’s App. at 25 (stating that “[a] party owning property as tenants by the entireties cannot divest his interest in the real estate. However, there may be an issue regarding the marital status of Husband and Wife on the date of transfer”).

² The record is unclear as of what date Husband granted Daughter his power of attorney.

\$2,000.00 to Wife's checking account. The petition was served on Husband's counsel and not on Daughter. *Id.* at 27. On January 23, 2009, Husband's counsel filed a motion to dismiss Wife's petition. Wife did not file an objection to the motion to dismiss. On February 4, 2009, the trial court issued a dismissal order. This appeal ensued.³

Wife contends that the trial court erred in dismissing her contempt petition against Daughter. The trial court did not specify upon what basis it granted the motion to dismiss. In such cases, we affirm if the court's action is sustainable on any basis found in the record. *R.J.S. v. Stockton*, 886 N.E.2d 611, 614 (Ind. Ct. App. 2008).

Wife alleges that Daughter violated the trial court's October 22, 2008 order that Husband's assets were not to be spent pending further action by the court. The trial court issued the order as part of its investigation into the factual basis necessary to support Wife's petition for emergency temporary guardianship. *See* Ind. Code § 29-3-3-4 (stating that the court may order an emergency temporary guardianship upon a showing that the protected person is incapacitated and that immediate and irreparable loss to his property would occur absent a court order). After both doctors' reports showed Husband to be competent, Wife filed a motion to dismiss the temporary guardianship on October 27, 2008. The trial court's dismissal order was not entered until November 7, 2008. Wife now seeks to hold Daughter in contempt for two transactions that occurred in the interim.

³ On June 19, 2009, Wife filed a motion to strike the information contained in footnote 2 of Appellee's brief pursuant to Indiana Appellate Rule 22(C). We grant Wife's motion in an order issued contemporaneously with this decision.

Wife filed the instant petition against Daughter under the cause number of the dismissed emergency temporary guardianship action.⁴ Daughter was never a party to the temporary guardianship proceedings. However, Wife asserts that Daughter was guilty of indirect contempt of the court's October 22 order as an interested nonparty. Indiana Code Section 34-47-3-1 provides,

A person who is guilty of any willful disobedience of any process, or any order lawfully issued:

- (1) by any court of record, or by the proper officer of the court;
- (2) under the authority of law, or the direction of the court; *and*
- (3) *after the process or order has been served upon the person;*

is guilty of an indirect contempt of the court that issued the process or order.

(Emphasis added.) Daughter was neither served with the original order she is alleged to have violated, nor was she served with a rule to show cause in the instant petition. Thus, Daughter's relationship to the previously dismissed guardianship proceeding was too tenuous to merit an order to show cause why she should not be held in contempt of court.

Wife was not without options for recouping her alleged losses. She could have filed an action to quiet title to the real property under Indiana Code Section 32-30-3-14. She also could have filed a claim against Husband's estate under Indiana Code Chapter 29-1-14.⁵ Instead, she chose to proceed under the cause number of a temporary guardianship petition that not only had been dismissed, but for which a factual basis had never been established and to which the alleged wrongdoer was neither made a party nor served with notice.

⁴ Guardianships terminate when the protected person either dies or is no longer incapacitated. Ind. Code § 29-3-12-1(b).

⁵ Indiana Code Chapter 29-1-14 outlines the procedures to be followed when filing claims against a decedent's estate.

In sum, Wife had other avenues available to her to seek redress against Daughter. As such, the record supports the trial court's decision not to resurrect the dismissed temporary guardianship. Accordingly, we affirm the trial court's dismissal of Wife's contempt petition.⁶

Affirmed.

BRADFORD, J., and BROWN, J., concur.

⁶ To the extent Wife asserts that Husband's counsel lacked standing to file a motion to dismiss the contempt petition, we note that Wife raises this issue for the first time on appeal. As such, the issue is waived. *Burcham v. Metro. Bd. of Zoning Appeals*, 883 N.E.2d 204, 210 (Ind. Ct. App. 2008). Moreover, Husband's counsel was the only person upon whom Wife served her petition for contempt. She did not serve the person she asserts to have violated the court order: Daughter. Generally, the issue of standing focuses on whether the *complaining party* is the proper one to invoke the court's power. *Alexander v. PSB Lending Corp.*, 800 N.E.2d 984, 989 (Ind. Ct. App. 2003), *trans. denied* (2004). Here, Wife served Husband's counsel with her petition and did not object at the time he filed his motion to dismiss. She now complains that he lacked standing to respond to the very petition with which she served him. As such, she invited the alleged error of which she now complains. See *C.T. v. Marion County Dep't of Child Servs.*, 896 N.E.2d 571, 588 (Ind. Ct. App. 2008) (stating that doctrine of invited error, grounded in estoppel, prohibits a party from taking advantage of error she invites by her own neglect or misconduct).