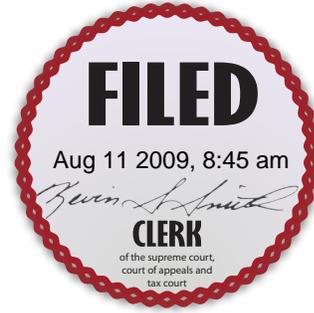


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE)
GUARDIANSHIP OF R.S.,)
AN INCAPACITATED ADULT.)
)
J.S.,)
)
Appellant,)
)
vs.) No. 40A01-0901-CV-14
)
B.S.,)
)
Appellee.)

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Roger L. Duvall, Special Judge
Cause No. 40C01-0205-GU-23

August 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

The trial court ordered J.S. to repay his father's estate \$46,330.21, ordered him to account for any of his father's personal property that he came to possess, and denied his petition to approve accounting. J.S. now appeals. We affirm.

Issue

J.S. raises two issues on appeal, which we consolidate and restate as whether the trial court abused its discretion in issuing its order.

Facts and Procedural History

Decedent R.S. had three children, J.S., another son, and B.S. On July 19, 2002, J.S. was appointed as guardian of his father and his father's estate. Later that year, R.S. entered a nursing home. With the specific authorization of the trial court, J.S. sold a parcel of his father's real estate for \$74,500. J.S. reported the sale to the trial court on May 7, 2003. The next day, J.S. filed a guardian's inventory showing the estate valued at more than \$115,500.

Two months later, J.S. used the guardianship's bank account to write himself a check for \$4443.14. He wrote "Food & Supplies" on the check's memo line. Appendix at 104. On September 28, 2003, J.S. wrote himself a check for \$40,005; the memo line appears to read, "Your Health Care." *Id.* at 110. During an evidentiary hearing held in 2008, B.S.'s attorney asked J.S. to explain this payment. He answered,

Two reasons. One is the fact that it was just going to go to Medicaid anyway and I would just as soon me have it as the government get it and the second was the fact that my sister, half-sister, had already taken \$24,000 from Dad and my half-brother had \$20,000 from Dad, and if they could get money for nothing, I should at least get paid for taking care of him.

Transcript at 19.

On July 29, 2004, an attorney filed his appearance on behalf of B.S., who had initially appeared pro se. J.S. filed an accounting on September 8, 2004; six days later, B.S. moved for a hearing, asserting that some of the items in the accounting were “highly suspicious.” App. at 141. The motion was denied. The Chronological Case Summary reflected no activity for almost twenty-one months – from October 13, 2004 until a different attorney appeared for B.S. on July 7, 2006.

Meanwhile, on September 24, 2005, J.S. used the guardianship’s bank account to purchase a television for \$1372.68 or \$1329.68 and a television stand for \$437. R.S. died on November 6, 2005. J.S. kept the television. He closed the guardianship’s bank account by writing a check payable to cash for \$115.39.

As noted above, an attorney appeared for B.S. on July 7, 2006. On August 29, 2006, J.S. filed an accounting, to which B.S. filed an objection. A special judge assumed jurisdiction of the matter and held evidentiary hearings on January 9 and May 27, 2008, during which J.S. and his wife testified. J.S. filed a “Petition to Approve Accounting and Payment to Guardian.” Id. at 212. The trial court denied J.S.’s petition, ordered him to repay the estate \$46,330.21, “which represents the total of improperly paid claims to the Guardian, the cost of personal property acquired by the Guardian after the Ward’s death and the closing value of the guardianship checking account,” and ordered J.S. to account for any other of his father’s personal property that he possessed. Id. at 229.

J.S. filed a motion to correct error, a “Verified Petition for Guardian’s Fees and

Attorney Fees,” and a claim for \$44,443.14. Id. at 235. The trial court denied the motion to correct error.

Discussion and Decision

J.S. claims that his efforts in caring for his father entitled him to the money that he paid himself from the guardianship property. On appeal, J.S. therefore argues that the trial court abused its discretion in ordering him to repay his father’s estate \$46,330.21, ordering him to account for any of his father’s personal property that he came to possess, and denying his petition to approve accounting.

We review for an abuse of discretion a trial court’s decision regarding a guardian’s fee. Ind. Code § 29-3-2-4(a); Schwartz v. Schwartz, 773 N.E.2d 348, 356-58 (Ind. Ct. App. 2002). We use the same standard of review to consider a trial court’s ruling on a motion to correct error. Paragon Family Rest. v. Bartolini, 799 N.E.2d 1048, 1055 (Ind. 2003).

Multiple sections within Indiana Code Article 29-3, “Guardianships and Protective Proceedings,” are applicable. First, in Indiana Code Chapter 29-3-4, “Protective Proceedings and Single Transactions,” a guardian who, in good faith, provides beneficial services to the protected person is entitled to reasonable compensation and reimbursement for reasonable expenditures. Ind. Code § 29-3-4-4. “These amounts may be paid from the property of the protected person as ordered by the court.” Id. (emphasis added).

Second, in Indiana Code Chapter 29-3-8, “Responsibilities and Powers of a Guardian,” a guardian may “pay to the person [or] guardian . . . having care and custody of the protected person . . . a reasonable amount to be expended for the support of the protected

person” with due regard to the size of the guardianship property, the protected person’s accustomed standard of living, and other sources of support. Ind. Code § 29-3-8-4. However, a guardian must “observe the standards of care and conduct applicable to trustees.” Ind. Code § 29-3-8-3. The Trust Code provides that if a trustee’s duty in the exercise of any power conflicts with his individual interest, he may only exercise that power with court authorization, where specifically authorized by the terms of the trust, or with “the written authorization of all interested persons.” Ind. Code § 30-4-3-5.

Finally, in Indiana Code Chapter 29-3-9, “Matters other than Appointment,” a guardian “is entitled to reasonable compensation for services as guardian and to reimbursement for reasonable expenditures made in good faith on behalf of the protected person.” Ind. Code § 29-3-9-3. While a guardian is so entitled, nothing in this chapter suggests that the guardian may pay himself from the guardianship property without notice to the court and all other interested parties.

Here, the guardianship order did not grant J.S. the power to pay himself from the guardianship property without observing applicable laws. Meanwhile, J.S. acknowledged in his testimony that he did not notify the court or his siblings before paying himself \$40,005 from the guardianship property. Indiana Code Chapters 29-3-4, -8, and -9 all reflect the General Assembly’s intent that a guardian obtain explicit authority – either through the terms of a court order or the written consent of all other interested persons – before paying himself from the guardianship property, even if it is ultimately determined that he was entitled to

some or all of the money.¹ Here, J.S. failed to obtain authority to pay himself from the guardianship property. Accordingly, the trial court did not abuse its discretion in ordering J.S. to repay his father's estate \$46,330.21, ordering him to account for any of his father's personal property that he came to possess, and denying his petition to approve accounting.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.

¹ J.S. argues that he and his father had an implied contract entitling him to compensation for his services. For the reasons noted above, whether it is ultimately determined that J.S. was entitled to compensation is not relevant to our consideration of this appeal.