

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

August 27, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

IN RE: DOYLE THOMAS DOTSON,) KNOX COUNTY
Deceased) 03A01-9702-CH-00056
)
and)
)
IN RE: CONSERVATORSHIP and)
ESTATE OF DOYLE THOMAS DOTSON)
)
DAISY MYNATT) HON. H. DAVID CATE,
) CHANCELLOR
)
Petitioner - Appellant)
)
v.)
)
MARIE DOTSON ISOM)
)
)
Respondent - Appellee) AFFIRMED AND REMANDED

JOSEPH B. YANCEY OF KNOXVILLE FOR APPELLANT

CHARLES LOCKETT OF KNOXVILLE FOR APPELLEE

O P I N I O N

Goddard, P. J.

Daisy Mynatt appeals the Knox County Chancery Court's dismissal of her petition regarding the Conservatorship of her deceased father, Doyle Thomas Dotson. Ms. Mynatt contends that the Trial Court erred in its denial of her petition for the removal of her sister Marie Dotson Isom as the Conservator of M.

Dotson's Estate. Ms. Mynatt additionally contends that the Trial Court erred in its denial of her petition for attorney fees, for the labors of her attorney, Joseph Yancey, in the handling of matters of the Conservatorship.

One matter--Ms. Isom's motion to dismiss this appeal--needs to be addressed at the outset. The motion contends the notice of appeal was premature. Our examination of the record persuades us that the motion is not well taken and it is accordingly denied.

This case originated on May 16, 1988, when Ms. Isom filed a petition to be appointed the Conservator of her father, Doyle Thomas Dotson. Ms. Mynatt stated in her answer to the petition that she had no objection to the appointment of her sister as Conservator. The Knox County Chancery Court granted Ms. Isom's petition and appointed her as Conservator of Mr. Doyle's Estate on June 21, 1988.

Mr. Doyle died on January 24, 1989, and the will was probated on February 15, 1989. On a motion by Ms. Isom for court approval of final accounting and closure of the Estate, the Chancery Court entered an order of reference, referring the case to a Special Master to hold a hearing on the issues of the closing.

The Master held a hearing on July 11, 1989, and made a number of findings of fact and law. The Master made three findings that are relevant to this appeal, which are summarized as follows:

(1) M^s. Mynatt had filed a claim for \$15,000 in payment in compensation for being the Conservator of the Estate. The Master awarded her a net amount of \$7,172 for her services.

(2) M^r. Dotson had on his person \$75,000 in cash at the time of his demise, which M^s. Isom had withdrawn from the bank for him. This caused the Estate losses due to the lost interest.

(3) As a matter of law, M^s. Isom was required to return to the Estate a sum of \$6,664 that she had taken from the Estate.

On each of these issues, M^r. Yancey represented M^s. Mynatt. The Master deferred the issue of attorney fees until a later date.

Subsequently, on May 2, 1990, Stanley Isom, M^s. Isom's husband, filed a claim against the Conservator for a total amount of \$10,120 for rent to cover the time which M^r. Dotson lived with M^r. and M^s. Isom. M^s. Isom, the Conservator, opted not to file an exception to this motion. M^s. Mynatt, however, through her attorney M^r. Yancey, filed an exception to the motion on the ground that M^s. Isom had already been compensated for the care of M^r. Dotson in her home. This requested compensation was disallowed by the Master after a January 1991 hearing and subsequent report.

On August 2, 1991, Charles Lockett, M. Isom's attorney, filed a claim for attorney fees and expenses in the amount of \$16,064.35 for his representation of M. Isom as Conservator. Upon motion of the parties, the Knox County Chancery Court, on February 4, 1992, referred to the Clerk and Master two issues to be resolved in this case:

1. Attorney fees allowable to Charles D. Lockett?
2. Attorney fees allowable to Joseph B. Yancey?

The Master held a hearing on these issues on December 1, 1991, and on March 30, 1992. M. Yancey represented M. Mynatt in the proceedings.

The Master filed his report on June 12, 1992. In his report, the Master addressed the issues of the two attorneys' fees. The Master awarded a payment of \$3,582.50 to be paid to M. Lockett by the Estate and Conservatorship of M. Dotson, with the remainder of these fees being paid by M. Isom. The Master stated, however, concerning the attorney fees of M. Yancey, that, "M. Yancey presented no petition for fees or any proof as to what his fee would be." The Master concluded that because M. Yancey presented no proof on the issue of his attorney fees, he should not be awarded any fees.

M. Mynatt filed exceptions to the Master's report on August 3, 1992, nearly two months after the filing of the report.

The matters she questions in her exceptions, however, are not raised on appeal. On October 14, 1994, Mr. Yancey filed a claim for attorney fees based on his work on behalf of the Conservatorship, which has been previously described.

On May 3, 1996, Ms. Mynatt filed a petition for removal of Ms. Isom as Conservator of Mr. Dotson's Estate, pursuant to T. C. A. 34-13-108. She argued that the removal of Ms. Isom as Conservator would be in the best interest of the Estate.¹ Ms. Mynatt additionally argued that it would be in the best interest of the Estate to award her attorney fees for the work of her attorney, Mr. Yancey.

After a hearing, the Knox County Chancery Court entered an order on November 14, 1996, and ordered the Conservator to close the Conservatorship Estate. The Chancery Court adopted the Master's report in toto and overruled Ms. Mynatt's exceptions. The Chancellor held that the petition to remove the Conservator was denied "inasmuch as the matters to be concluded, other than properly closing the conservatorship, are in the estate."² The

¹ Ms. Mynatt argued that the following alleged facts, which we summarize, warranted Ms. Isom's removal as Conservator:

- (1) Ms. Isom allowed Mr. Dotson to retain \$75,000 in cash on his person.
- (2) Ms. Isom allegedly gave her son \$6,600.84 from the Estate, and she was forced to return the money to the Estate.
- (3) Ms. Isom filed a claim against the Estate for \$15,281.25, and her eventual award was \$8,113.25.
- (4) Mr. Stanley Isom, Ms. Isom's husband, filed a claim against the Estate for \$10,120 for the alleged room and board for Mr. Dotson, which, although not excepted to by Ms. Isom, was excepted to by Ms. Mynatt and eventually denied.

² The Chancellor was referring to the proceedings to administer Mr. Dotson's estate.

Chancellor also denied M. Mynatt's petition for attorney fees for two reasons:

- 1) the granting of the fee has already been addressed, and
- 2) the petition to remove the Conservator has been denied thus not giving rise to the other relief provisions in T. C. A. § 34-13-[108][sic](d)(5).

M. Mynatt appeals this order and opinion of the Chancellor.

The first issue that M. Mynatt raises on appeal is that the Chancellor erred in denying her petition to remove M. Isom as Conservator of M. Dotson's Estate. M. Mynatt relies on the language in T. C. A. 34-13-108(a) which states, "[a] conservator appointed under this chapter may be discharged or have its duties modified if the court determines that . . . it is in the best interest of the disabled person that the conservatorship be terminated."

Since M. Dotson was already dead at the time M. Mynatt filed her petition to have M. Isom removed as Conservator, the petition is untimely and irrelevant, since the death of the ward terminated the Conservatorship. T. C. A. 34-13-108(e) states, "[w]hen the disabled person dies . . . the conservatorship shall terminate." Therefore, since she filed the petition on May 3, 1996, and M. Dotson died in 1989, the petition was untimely. If M. Mynatt had desired to remove M. Isom as Conservator, she should have filed the petition while M. Dotson was still alive. We conclude that the Chancellor was

correct in denying her petition and in ruling that the only unfinished item in the Conservatorship proceeding was its closing.

The second issue that Ms. Mynatt raises is that the Chancellor erred since he failed to file a finding of fact in conjunction with the hearing on the petition for the removal of the Conservator. She relies on T.C.A. 34-13-108(d), which states that "[u]pon conclusion of the hearing, the court shall enter an order setting forth the court's findings of fact." Assuming, arguendo, that the Chancellor was in error by not filing a finding of fact after this hearing, the error would be harmless because the filing of the petition was untimely in the first place.

The final issue that Ms. Mynatt raises on appeal is that the Chancellor erred in denying her petition for attorney fees for the work that Mr. Yancey performed relating to Mr. Dotson's Conservatorship. Ms. Mynatt was not entitled to attorney fees for two reasons. First, the issue of Mr. Yancey's fees were concluded at the Master's hearing of which a report was filed on June 12, 1992. The Master's report stated that neither Ms. Mynatt nor Mr. Yancey put on any proof concerning his fees. Local Rule 17 of the Knox County Chancery Court states that:

RULE 17. APPLICATION FOR FEES

All applications for Court approval of fees for attorneys, administrators, executors, conservators, guardians and others, except in domestic relations matters, shall be supported by sworn statement, setting forth in detail the amount sought and the basis therefor.

However, there is no proof in the record that Ms. Mynatt at any time put on any proof of her requested attorney fees.

Furthermore, Rule 22 of the Knox County Chancery Court states that,

RULE 22. CLERK AND MASTER REPORTS

Orders of reference to the Master shall be in accordance with Rule 53 of the Tennessee Rules of Civil Procedure; provided, a transcript of the proceedings and of the evidence shall be deemed waived unless the order of reference specifically requires a transcript of the proceedings and of the evidence.

The Chancellor's order of reference failed to mention the transcript of the proceedings. Therefore, a transcript as to the hearing relating to attorney fees is not part of the record, and we must presume that the Chancellor's findings were correct.

Leek v. Powell, 884 S. W 2d 118 (Tenn. App. 1994); Sherrod v. Wx, 849 S. W 2d 780 (Tenn. App. 1992); Daniel v. Metropolitan Government, 696 S. W 2d 8 (Tenn. App. 1985). Additionally, Ms.

Mynatt's exceptions to the Master's report were untimely³ and did not raise an exception to the issue of M. Yancey's fees.

M. Mynatt filed her petition for attorney fees in conjunction with her petition to have M. Isom removed pursuant to T. C. A. 34-13-108(d)(5) that the court has the power to "grant any other relief the court considers appropriate and in the best interest of the disabled person." She argued that it would be in the best interest of the disabled person to grant her attorney fees. However, this provision in the statute is based on the assumption that the "disabled person" is still alive. Therefore, the petition for attorney fees under this provision was properly denied, and the Chancellor did not abuse his discretion in denying this petition.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for such further proceedings as may be necessary and collection of costs below. Costs of appeal are adjudged against M. Mynatt and her surety.

³ Tennessee Rule of Civil Procedure 53.04, which relate to Master's Reports states: "In an action to be tried without a jury the court shall act upon the report of the master. Within ten (10) days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties."

Since M. Mynatt did not file her exceptions to the Master's report until nearly five weeks later, they were not timely.

Houston M Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

Don T. Murray, J.