



SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS
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In the Matter of:

BRIAN THOMAS,

An Alleged Incompetent Member.

Case No.: **APC 17-0020**

OPINION AND ORDER

FILED
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COURT
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BEFORE JUSTICES PAUL BENDER, MARY GUSS, AND SIERA RUSSELL

This appeal considers three related issues. The first issue is whether a Guardian ad Litem (GAL) for an adult member with an appointed conservator may seek to have a third-party guardian, (in this case the Community), appointed for the member when no relatives or friends are available and the member cannot make responsible decisions regarding his personal safety, health, or welfare or provide for such needs as food, shelter, clothing, and medical care. The second issue is whether a GAL may request a mental health evaluation (MHE) for an adult client. The third issue involves the timing of appointment of a GAL in an adult guardianship case.

Here, we hold that a GAL may petition to have the Community Office of the Public Fiduciary (OPF) appointed as guardian in circumstances such as Mr. Thomas's and that the court has broad discretion to grant the GAL's request to

order an MHE. We further hold that under section 10-166 of the Salt River Pima-Maricopa Indian Community Code (S.R.C.), when no GAL has yet been appointed and a petition for guardianship of an adult has been filed, a GAL must be appointed immediately after the filing of the guardianship petition or prior to the next scheduled hearing, whichever is earlier.

The appellate court heard oral argument on January 12, 2018. In deciding this case, the court has also considered the Appellant's brief, the proceedings below, and the extensive trial court file.

FACTUAL and PROCEDURAL BACKGROUND

Mr. Thomas first became a ward of the Community in 1991 when he was eight years old. When he turned seventeen, the trial court appointed a GAL from the Legal Service Office to protect his interests, as he was facing placement in a mental health facility.

Mr. Thomas turned nineteen on June 6, 2010. Then began a series of filings and orders made on his behalf, in efforts to provide for Mr. Thomas's financial and personal wellbeing. On May 24, 2010, the GAL (who had been previously appointed from the Legal Services Office) filed for the appointment of a conservator for Mr. Thomas. The OPF was appointed temporary conservator, and a full hearing was scheduled. After some missed appointments and continuances, the hearing was held in March of 2011. The court entered a Conservator Order on March 22, 2011, appointing a conservator "over Brian

Thomas's funds." The conservator also was given the "full authority to sign for medical, educational, and any social issues pertaining to the safety and welfare" of Mr. Thomas.

On October 6, 2011, an Order was issued removing the language that granted the conservator authority to sign for medical, educational, and social issues. At this time, Mr. Thomas was incarcerated in a mental health facility, which was attending to those matters.

In February 2013 a review hearing was conducted with respect to Mr. Thomas's status. The Order issued after that hearing continued the appointments of both the Conservator and the GAL. Other review hearings held between 2011 and 2013 had done the same.

In 2014 the Salt River Pima-Maricopa Indian Community guardianship laws were revised; sections 10-300 et seq. were added. Separate definitions of guardian and conservator now appeared in the code. Turnover in the Legal Services Office resulted in several different GALs being assigned to Mr. Thomas's case through the end of 2015.

On March 15, 2016, the trial court entered yet another Guardianship Review Order. The court stated in the order that Mr. Thomas, who was still incarcerated, "shall remain on status of an incapacitated adult" until further order of the court and that the OPF Conservator shall "administer, manage and sign" for his personal affairs. The next review hearing was set for and occurred in

September 2016. At that time the court entered orders that were almost identical to the language contained in the March order. In addition, Sarah DeOliveira, the appellant in this matter, assumed duties as GAL for Mr. Thomas.

At the March 2017 review hearing, Mr. Thomas, who was newly released from incarceration, was continued in the status of an incapacitated adult. Further, the court ordered that the Conservator continue to manage and sign for his personal affairs, that he undergo an MHE, and that he seek counseling services. Mr. Thomas did not comply with the courts orders.

In June 2017 the GAL for Mr. Thomas sought an emergency hearing because after communicating with him, she had had grave concerns about his deteriorating mental health. The Office of the General Counsel's Government Advocate, on behalf of the OPF conservator, echoed the GAL's concerns and also requested a Review Hearing, citing Mr. Thomas's self-disclosed homelessness and "mental health crisis."

A hearing was convened and held on the emergency motion on July 5, 2017. At that hearing the court vacated the request for an MHE and the September 2017 guardianship review hearing. The reason given by the court for those orders was that the Thomas case had started out as a conservatorship and that "no determination of incompetency or incapacity has ever been made by the court...." Further, the court expressed that it could not make any orders outside the conservatorship, given that no prior determination of

incompetency or incapacity had been made and no petition for guardianship had been filed.

Based on the July Order, the GAL filed a Petition for Appointment of Guardian on July 14 seeking to have the Community appointed as guardian. In response to that Petition and following a hearing on August 30, the court entered an order of dismissal, which was filed on September 1. The order stated that only a relative or friend could file such a petition and that section 10-151 of the Community Code does not permit a GAL to file a petition or permit any party to file for the appointment of another person or entity as the guardian. The GAL was ordered relieved from her responsibilities in the case because the court's decision rendered her recommendations unnecessary.

The orders of July 5 and September 1 provide the basis for the current appeal. Specifically, The GAL appeals from the trial court's ruling that the GAL cannot petition to have the Community appointed as guardian for an adult member even if the GAL has reasonable concerns about the adult member's welfare and that only a "relative or friend" may file such a petition. The GAL also asserts that a GAL may request that the court order an MHE for a client, and that the court must appoint a GAL immediately after a petition for guardianship is filed.

DISCUSSION

The appellate Court has jurisdiction under S.R.O. § 4-86(1) because this case involves final judgments of the Community court in a civil matter: the dismissal of the GAL's petition for guardianship of Mr. Thomas and the vacating of the prior order for an MHE. We review these issues de novo because they are issues of law.

1. A GAL May Petition for a Third Party to Serve as Guardian for A Client

In rejecting the GAL's petition for guardianship, the court concluded that the GAL statute listed no specific duty allowing a GAL to petition for appointment of a third-party guardian, and therefore the GAL, who was not a "relative or friend," could not perform that duty.

The trial court's rulings fail to prioritize the code and policy extending protections to vulnerable or incapacitated adult members of the Community. Instead, the rulings would preclude an adult member who has no suitable relatives or friends in the Community from taking advantage of services established to help members in need.

There is nothing in the Code that prevents a GAL from filing a guardianship petition; neither Section 11-160 nor Section 10-151 preclude GALs from petitioning for appointment of a third-party guardian when doing so is in their client's best interests. In fact, various sections of the Salt River Ordinances establish a GAL's affirmative duty to protect their client's best interests. Section

10-161 provides that the express purpose of the GAL statute is to "ensure that an individual's best interests are being protected...throughout the legal action," while Section 10-167 give a GAL authority to file pleadings and motions if in the ward's best interests. Section 11-160 gives the GAL many affirmative powers and duties, including filing petitions "that may include...guardianships"; advocating for "appropriate community services"; as well as to "file petitions, motions, responses or objections as necessary to represent the individual's best interests." Relief requested by a guardian ad litem in such filings may specifically include (but is not limited to) a mental exam, guardianship, or mental health care.

Furthermore, the court should interpret guardianship statutes broadly and in harmony with other sections to promote community values and extend protection to Community members who need it. See *Day v. Arizona Health Care Cost Containment Sys.*, 109 P.3d 102, 116, 210 Ariz. 207, 221 (App. 2005); see also *Collins v. Stockwell*, 671 P.2d 394, 137 Ariz. 416 (Ariz., 1983)) (internal citation omitted).¹ Statutes in Titles 10 and 11 on similar topics cover guardianship for minors, guardianship for incapacitated adults, guardians ad litem, commitment and treatment of mentally ill persons, and protection for elderly and vulnerable

¹ The SRP-MIC Code states that the Community court follows Arizona law unless it conflicts with SRP-MIC law. S.R.O. § 10-154. Arizona law contemplates that guardianship and conservatorship actions may be made on the petition of the ward "or any person interested in the ward's welfare." See *In re Sommer*, 241 Ariz. 308, 386 P.3d 1281 (App. 2016)).

adults. Nowhere does language appear that would bar a GAL from seeking a guardianship for a client in Mr. Thomas's circumstances when no relative or friend is available. On the contrary, the law allows "any legally competent person whose interests do not run counter to those of the person on whose behalf they are acting--a "next friend"--to appear on behalf of a vulnerable adult in court. S.R.O. § 10-180. The next friend need not be a relative. The statutes the court found limiting should instead be interpreted consistently with the goal of protecting the ward's best interests and providing the most protection for Community members who are unable to manage their affairs.

Finally, the establishment of the OPF Guardianship Division further indicates that the GAL's guardianship petition was proper and not prohibited. After Code revisions in 2014, the OPF established two separate divisions, a Conservatorship Division and a Guardianship Division. Currently, S.R.O section 10-300 directs that the OPF, under the Community's Health and Human Services division, "will serve as guardian . . . to protect the health, welfare, and educational needs" of an incapacitated member upon court appointment. It would make no sense to establish a division for Community members with dire health and welfare needs but eliminate any viable means for those members to access services the division provides. Therefore we hold that the Legal Services Office or GAL may request that the OPF Guardianship Division be appointed as guardian of Mr. Thomas.

It was appropriate and lawful for the GAL to file a petition asking for a guardian to protect her client's best interests. It makes no sense to prevent a GAL from petitioning the court to obtain services for a client who has suffered from mental disorders, has disclosed that he is in crisis, has no family members he can turn to, and may require Community services.

2. A GAL May Request an MHE

The court denied the request of the conservator and the GAL for an order requiring Mr. Thomas to "comply with the prior order" to complete an MHE because "no prior determination has been made and/or a petition for guardianship has been filed" in the matter. This reasoning could prevent a person from ever accessing community resources. Before appointing a guardian or conservator for an adult, "the Community court must, in writing based on clear and convincing evidence, determine that an adult meets the definition of incapacitated and [is] therefore unable to take care of themselves and/or their property before appointing the office as conservator or guardian." S.R.O. § 10-304(a)(1). Under this section, an MHE contributes greatly to the court's determination of whether a person suffers from an incapacity and seems indispensable to such a determination.

Accordingly, we find that in overseeing a client's best interests, a GAL may request an MHE. See S.R.O. § 11-160(g)(3)(a). The court has broad discretion to grant or deny the MHE request.

It was appropriate and lawful for the GAL to file a petition asking for an MHE, especially since the court indicated that an MHE was a prerequisite to appointment of a guardian. The petition included facts supporting the need for an MHE. The court may exercise its discretion in granting or denying the petition.

3. Section 10-166 Dictates Timing for Appointment of a GAL

When the court appoints a GAL to represent the best interests of an incapacitated adult or vulnerable adult under S.R.O. section 10-164, that appointment must occur "immediately after the earliest of: (1) The filing of petition of involuntary commitment, guardianship, or conservatorship over an incapacitated adult. (2) Once the need for a [GAL] has been identified in a guardianship (3) The court shall appoint a [GAL] prior to the next scheduled hearing if a GAL has not been appointed previously" S.R.O. § 10-166.

The GAL had been representing Mr. Thomas's best interests when the court rejected her petition for an MHE, denied her subsequent petition for guardianship, and dismissed her as GAL. Under section 10-166, appointment of a GAL should occur immediately after the filing of the guardianship petition in this case.

CONCLUSION

We hold that a guardian ad litem may, under Salt River Ordinances, file a petition for the appointment of a third-party guardian to manage the "health, welfare, and educational needs" of a client. Such a petition may request

Therefore, the decision of the trial court is **reversed** and this case is **remanded** to the trial court for actions consistent with this opinion.

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