

The State of New Hampshire

6th Circuit Court

PROBATE Division

IN RE: Guardianship of .

Docket #: 317-2013-GI-00260

Motion for Reconsideration

NOW COMES, Jeannette Marino, guardian of the estate . . . t (“Guardian”) and requests reconsideration of the October 20, 2014 order clerk’s notice October 29, 2014, in which the Court denied payment of outstanding guardianship fees as allowed by Medicaid from available resources. The court held that the requested fees totaling \$4,709 as reflected in the guardian’s petition, are unreasonable on their face and further concluded the work was ministerial in nature and much of the work did not benefit the ward. In its previous denial, the court notes it did not address the reasonableness of fees as the basis for denial was the guardianship estate being closed and the ward had no more assets. The Guardian now moves the Court to reconsider its findings because of certain facts that the Court overlooked or misapprehended. In support thereof, the guardian states the following:

Facts

1. On or about March 27, 2013, a petition was filed by Catholic Medical Center seeking guardianship over the person and estate, . . . and nominating, . . . , father of . . . as the guardian. As reflected in the Petition for Guardianship, . . . suffered severe cognitive and psychiatric symptoms as the result of alcohol poisoning, including delusional thought process, paranoia, long-term and short-term memory loss and confusion.
2. On April 25, 2013, . . . petitioned the court requesting the appointment of an appropriate person to handle the estate. . . . stated in his petition that after reviewing matters of the estate he “found that the complexities of the estate is more than I feel competent to handle.” The complexities were noted as “ the home is in foreclosure, a small business LLC in arrears and unpaid taxes for 2 years.”

3. On May 9, 2013, the Court contacted Jeannette Marino and asked whether she would accept an appointment as guardian over the estate of . Given the complexity of the issues and because Ms. Marino has significant experience handling such difficult and complex cases the court determined she would be an appropriate appointment. Ms. Marino notified the court of her acceptance to be appointed.
4. On July 2, 2013, was appointed guardian over the person of . and Jeannette Marino was appointed guardian over the estate of .
5. On August 13, 2013 the guardian of the estate filed a motion with the Court seeking approval of guardian fees in the amount of \$125.00 per hour. A copy of the guardian's fee schedule was attached to the motion. The court responded by neither approving nor denying the motion and instead noted "fees will be approved if reasonable and beneficial to the ward". The court further requested information as to the necessity to continue guardianship of the ward if assets are depleted and the ward qualified for Medicaid. By letter dated September 23, 2013, the guardian of the estate advised the court of the necessity for the estate to remain open to settle the disposition of the ward's belongings, file taxes and obtain both Social Security and Medicaid benefits. An additional fee schedule was provided with the letter.
6. Between July 2013 and July 2014, the guardian of the estate, negotiated with the bank to allow additional time to salvage the ward's personal belongings, assess and eventually dispose of the ward's vehicle, file outstanding tax returns, close and settle all matters in connection with the ward's business entity, , LLC, complete all necessary and appropriate business and other delinquent filings neglected by the ward in the several months prior to his injury. The guardian also applied for all available state and federal benefits eventually obtaining Medicaid medical coverage, Social Security disability benefits and retro-active payment in the amount of approximately \$6,700.00¹
7. The guardian was additionally responsible for applying and obtaining federal and state benefits for the ward, both of which require extensive historical financial reporting which the ward was not able to even minimally assist. Given the extensive financial problems of the estate, all of which had to be resolved in order to obtain federal and state benefits, the court erred in its conclusion these duties did not benefit the ward.

¹. These benefits were paid to the Moore Center as providers and appointed representative payee for the ward and paid in part towards outstanding legal fees to the ward's attorney and partial payment of \$4,800 in guardian fees.

Issue

8. The issue for this Motion for Reconsideration is whether the \$125 per hour fee noticed to the court at the time of the court requested appointment and upon which the guardian relied was reasonable, given the difficult nature of the case and the skill-level required of the guardian and whether or not the work performed was beneficial to the ward. The guardian respectfully argues that the Court has overlooked or misapprehended certain facts in its determination that the guardian's fees were unreasonable in the courts conclusion that the nature of the work was ministerial in nature and did not benefit the ward.

Legal Argument

9. "A motion for reconsideration is designed to bring to the trial court's attention points of law or fact that the Court has overlooked or misapprehended." Farris v. Daigle, 139 N.H. 453 (1995). The motion must state, "with particularity, points of law or fact that the Court has overlooked or misapprehended and shall contain such argument in support of the Motion as the movant desires to present." NH Probate Court Rule 59-A,(1). In this case the Court has overlooked, and failed to appropriately consider, the level of experience and competency necessary for a guardian to bring about a quick beneficial resolution to a vulnerable adult who could not act on his own behalf and was unable to even minimally assist the guardian of the estate is resolution of the complex financial matters.
10. The motion for reconsideration is proper because the Court misapprehended certain facts concerning the availability of assets for payment of fees. RSA 463:A 23 states a guardian may place a lien up on the estate for the payment of fees. There is no limit that fees may only be paid from assets contained in the estate guardianship.
11. The motion for reconsideration is also proper because the Court overlooked, and failed to appropriately consider, the complexity of the case and the guardian's responsibilities to the ward. The Court fails to acknowledge that the resolution of issues by such an experienced guardian benefitted the ward and his estate. A less-experienced guardian and advocate would likely have taken longer, and incurred larger fees, as a result of his or her inability and lack of experience in the management of such difficult issues.

12. The motion for reconsideration is also proper in that the court erred in its conclusion the ward had no income. The guardian over the estate applied for Social Security benefits which were paid to Moore Center Services as the appointed representative payee. For the period of time noted the ward received approximately \$6,700 in retro-active benefits which continued at \$721.00 per month. As a Medicaid recipient, all of the wards income is paid to the Medicaid approved facility and programming, after payment of all outstanding medical bills and other approved expenses, guardian and legal fees and personal allowance.
13. "Every guardian shall be allowed a reasonable compensation for all proper expenses and services in the discharge of the guardianship. RSA 464-A:23. Administrative expenses approved by the court, including but not limited to guardianship fees, legal fees, and appraisal costs shall be paid out of the estate of the ward as a priority over other debts and obligations of the ward to the extent that funds are available and the needs of the ward are being met. In determining reasonable compensation for fiduciaries, including guardians, the court should consider the size of the estate, the complexity of the estate, and the fiduciary's responsibilities in light of the services rendered, with "the amount dependent upon the labor, risk, responsibility and trouble of each particular case." In re Estate of Rolfe, 136 N.H. 294, 298 (1992) (quotation omitted).
14. Fees and expenses of Fiduciaries and Attorneys shall be subject to the approval of the Court. In all cases, fees and expenses shall be reasonable for the work, responsibility, and risk. Factors used to determine the reasonableness of a fee may include the time and labor required, the size of the estate, the requisite skill, the customary fee, a fee agreement, the results obtained, time limitations and the length of the professional relationship. Prob. Div. R. 88. Furthermore, NGA Standard 22 (attached hereto) summarizes guidelines, mandates and ethical considerations in a more detailed but almost identical reflection of both RSA 464-A:23 and Prob. Div. R. 88, and supports the basis for the conclusions of the Court in In Re Estate of Rolfe.
15. The Guardian respectfully points out the court erred in its determination that her fees were not reasonable. Furthermore, the guardian argues that she relied upon the Court's order that all reasonable fees for work beneficial to the ward would be paid. The issues in this matter were complicated in nature and required not only extensive time and labor, but also the skills and knowledge of an experienced guardian who was able to manage financial and entitlement issues of a significantly incapacitated ward. Additionally, the guardian was presented with significant risk in the management of the wards finances as the consequences to the ward if not done properly were significant.

16. The Court should also recognize that despite the number of issues in this matter to be addressed, there were virtually no expenses for outside professional services, including legal or accounting. As an experienced guardian, all matters, petitions, preparation of financial and other documents, assessments and planning were completed solely by the guardian.
17. The guardian also respectfully points out the court overlooked and misapprehended the value of the services provided by this private guardian and her willingness to respond to specific requests from probate court judges throughout the state to take on difficult cases such as this. There is value in the services that a guardian provides on a daily and monthly basis that is difficult, if not impossible, to quantify. The services provided by private guardians is invaluable to the system that is designed to protect our most vulnerable citizens from those who would seek to harm or exploit them. The guardian agrees with the Court that all fees must be reasonable and that fiduciaries are accountable to the Court. Here, the guardian feels that her fees have always been reasonable and that her efforts on behalf of her ward, and all other wards, are of great benefit to the ward and focused on protecting the ward's, estate, independence and dignity.

Wherefore, on the basis of the argument presented above, the guardian now requests the court reconsider its October 20, 2014 decision and grant approval of payment of outstanding guardian fees as allowed by Medicaid from available resources.

Respectfully Submitted,



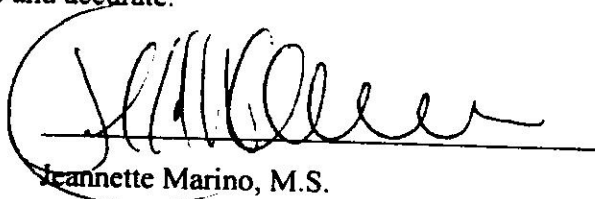
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I swear the facts contained in this motion are true and accurate.



Jeannette Marino, M.S.