

SUPREME COURT

In Case No. 2013-0107, In re Guardianship of Alden F., the

The record shows that the court based its conclusion as to the reasonableness of the fees incurred upon a finding that the value of the ward's entire estate is \$49,441.56. In reviewing the record, however, we note that the inventory lists the value of the ward's personal estate as \$49,441.56. The value of the ward's entire estate is listed as \$647,141.56. The difference, \$597,700, is the value listed for the ward's real estate. In its order, the trial court acknowledged the substantial value of the ward's real estate but declined to consider it for purposes of the fee award because the real estate is located in Massachusetts and, thus, "is not within the jurisdiction of the New Hampshire court."

We conclude that the trial court erred when it failed to factor the value of the ward's real estate into its analysis simply because the property is located in Massachusetts, particularly in light of its finding that the value of the ward's estate was one of "the most significant factor[s]" in its assessment of the reasonableness of the fees incurred. As previously noted, RSA 464-A:26, I, requires the guardian of the estate to take possession of "all of the ward's real and personal property" and to "prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of the estate's assets." See RSA 464-A:26, I (emphasis added). The record shows that the guardian listed the Massachusetts real estate in the schedules filed with her accountings and assumed responsibility for payment of utilities, insurance, and real estate taxes. At the hearing on her fee request, the guardian testified that she also initiated an action in Massachusetts to be appointed as a conservator over the ward's real estate. The record shows that a number of the contentious issues in the case related to the Massachusetts real estate.

Accordingly, we vacate the trial court's fee award and remand for the court to consider the reasonableness of the fees and costs incurred by the guardian and her attorneys in light of the total value of the ward's estate, including the real estate. Upon remand, the guardian may submit detailed billing statements from her attorneys, subject to whatever safeguards may be appropriate for the protection of the attorney-client privilege.

Finally, we address the guardian's argument that the trial court erred in determining that the \$11,748.49 in attorney's fees incurred to initiate an action for breach of fiduciary duties pursuant to RSA 506:7 is not payable from the ward's estate. The guardian argues that the RSA 506:7 action was necessary to protect and preserve the estate. See RSA 464-A:26, I ("It is the duty of the guardian of the estate . . . to prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of the estate's assets."). The ward argues that the RSA 506:7 action was unnecessary and duplicative of other pleadings in which the guardian sought similar relief. The trial court did not reach the issue of whether the fees were reasonably incurred, having ruled that as a matter of law they were not payable from the ward's estate. However, we disagree: we do not construe RSA 506:7, V to preclude recovery of attorney's