NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: MELANIE ELLETT, AN INCAPACITATED PERSON	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: EDITH BENSON, ESQ., GUARDIAN	No. 1860 WDA 2014

Appeal from the Order Entered October 8, 2014
In the Court of Common Pleas of Erie County
Orphans' Court at No(s): 332-2010

BEFORE: BENDER, P.J.E., SHOGAN, J., and MUSMANNO, J.

MEMORANDUM BY BENDER, P.J.E.: **FILED FEBRUARY 1, 2016**

Edith Benson, Esq. (Appellant), representing herself, appeals from the October 8, 2014 order that removed her as plenary guardian of the person and estate of Melanie Ellett (Ms. Ellett), an incapacitated person, and appointed a substitute plenary guardian. Because we conclude that Appellant does not have standing, we grant the motion to quash filed by Ms. Ellett, through counsel.

Ms. Ellett, who is 56 years old, "suffers from moderate mental retardation; Down's syndrome; a speech disorder; and an anxiety disorder. She is ambulatory; has limited verbal skills; and requires assistance with activities of daily living." Trial Court Opinion (TCO), 1/15/15, at 1. While Ms. Ellett's parents were alive, she resided with them and was cared for at times by a caregiver. After her parents died, Ms. Ellett moved to Sunrise Senior Living's Assisted Living Community in Erie, Pennsylvania. Ms. Ellett's

siblings, Bruce Ellett and Kristie Shaffer, reside in Georgia.[1] Her siblings and Ms. Shaffer's two adult sons are part of Ms. Ellett's extended family. Jeri Pistone, one of Ms. Ellett's former special education teachers, and her husband, Dennis Pistone, have been Ms. Ellett's close friends for over thirty years.

On November 19, 2010, Appellant was appointed as Ms. Ellett's plenary guardian of her person and estate. On November 28, 2012, Ms. Shaffer filed a motion for a guardianship review hearing and/or appointment of a new guardian and for the appointment of counsel for Ms. Ellett. Ms. Shaffer alleged that Ms. Ellett and her family "experienced conflict and incompatibility with Appellant." TCO at 2. Raymond A. Pagliari, Esq., was appointed as independent counsel for Ms. Ellett. The hearing on Ms. Shaffer's motion was continued several times. Then, on December 19, 2012, Ms. Shaffer filed an emergency petition, "requesting visitation between [Ms. Shaffer] and [Ms. Ellett] over the 2012 Christmas holiday. [Ms. Shaffer] alleged Appellant had unilaterally terminated contact between [Ms. Ellett] and [Ms. Ellett's] family and friends during the Spring of 2012, against [Ms. Ellett's] wishes, and continued to prevent contact between the

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[1] In October of 2010, a protection from abuse (PFA) proceeding was instituted by the caregiver against Ms. Shaffer on behalf of Ms. Ellett. However, the PFA action was discontinued later that month and no final PFA order was ever entered.

siblings." ***Id.*** 3. The petition for emergency relief was granted on December 20, 2012.

Over the ensuing months, various petitions and motions, including a motion requesting recusal of the presiding judge, were filed and resulted in continuances of the hearing on the guardianship review petition. Eventually hearings were held on June 11, 2013, October 9, 2013, November 5, 2013, and on October 7, 2014.

> From the bench, the [c]ourt directed the removal of Appellant as guardian pursuant to 20 Pa.C.S.A. §§ 5515 and 3182, for jeopardizing the interests of the person and estate of [Ms. Ellett] by continuing to obstruct [Ms. Ellett's] contact with her siblings, [Mr. Ellett] and [Ms. Shaffer]. The [c]ourt determined Appellant failed to assert the rights and best interests of [Ms. Ellett], and to respect, to the maximum extent possible, [Ms. Ellett's] expressed wishes to have contact with her brother and sister, in contravention of 20 Pa.C.S.A. § 5521(a). The [c]ourt determined another guardian should be appointed for [Ms. Ellett], and removed any restrictions with regard to sibling contact.

Id. at 8 (citations to the record omitted). Subsequently, on October 8, 2014, the court entered the order removing Appellant as Ms. Ellett's guardian and appointing a substitute guardian.

Appellant filed an appeal and a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. In her brief, Appellant lists the following issues for our review:

> A. Whether the trial court erred in failing to follow rules of procedure in conduct of hearing thereby denying due process?

> B. Whether the trial court erred in failing to follow applicable statutory provision of Chapter 55, Incapacitated persons, Title 20 Pa.C.S.A. sections 5501-5555?
>
> C. Whether the trial court abused its discretion in the manner in which the trial was conducted and rulings were made?

Appellant's Brief at 2.

To address these issues, we are guided by the following:

> In the case of a petition for removal of a guardian, our Court's role is to determine whether the orphans' court abused its discretion. The power of the orphans' court to remove a guardian is an inherent right, which will not be disturbed unless there is a gross abuse of discretion. ***See Cronauer v. Gring***, 184 Pa. Super. 213, 132 A.2d 772, 773 (1957).

In re Estate of Border, 68 A.2d 946, 959 (Pa. Super. 2013).

However, before we may reach the merits of Appellant's issues, we must address the December 9, 2014 motion to quash Appellant's appeal filed by Ms. Ellett's attorney. This Court denied the motion without prejudice, allowing Ms. Ellett to again raise the quashal issue before this merits panel. ***See*** Superior Court Order, 1/28/15. Essentially, Ms. Ellett contends that Appellant lacks standing to appeal the trial court's October 8, 2014 order, which discharged Appellant as her guardian, because Appellant is not a party, as defined in 42 Pa.C.S. § 102,[2] and is not aggrieved as required by

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[2] In 42 Pa.C.S. § 102, the term party is defined as "[a] person who commences or against whom relief is sought in a matter."

Pa.R.A.P. 501.[3] The motion relies on ***In re Elliott Estate***, 131 A.2d 357 (Pa. 1957), to support the contention that Appellant is not a party, nor is she aggrieved. The Supreme Court in ***Elliott*** determined that the appellant/trustee had no standing to prosecute the appeal, *i.e.*, the trustee had no standing to attack the order of the appointment of a guardian. In discussing this issue, the Court explained that:

> [I]n the absence of some special trust purpose, neither the trustee's abstract interest in seeing the testator's intent carried out, nor his concrete interest in his fees, can prevent the termination of the trust if all the beneficiaries agree to terminate. To make him an aggrieved party, something else is necessary. The additional element may be the fact that he has been surcharged…. He may appeal from a decree construing the relative rights of beneficiaries if some are unascertained or incompetent to act for themselves…. Where a third party successfully claims against the trust estate, the trustee may, and in some situations must, appeal…. In those appeals, made on behalf of the fiduciary or of beneficiaries of the fund, the fiduciary was a party aggrieved, but, in the absence of surcharge or duty to protect some otherwise unrepresented trust interest requiring protection, the right to appeal has been uniformly denied.
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> If the order or decree imposes upon the trustee a personal liability such as a surcharge or if the trustee has a duty to protect some otherwise unrepresented trust interest which requires protection then and only then does the trustee have a standing to appeal.

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[3] Rule 501 provides that "[e]xcept where the right of appeal is enlarged by statue, any party who is aggrieved by an appealable order, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom."

Id. at 359 (citations, quotation marks and footnote omitted). The ***Elliott*** opinion further states:

> A cardinal principle, which applies alike to every person desiring to appeal, whether a party to the record or not, is that he must have a (direct) interest in the subject[]matter of the (particular) litigation, otherwise he can have no standing to appeal. And not only must a party desiring to appeal have a (direct) interest in the particular question litigated, but his interest must be immediate and pecuniary, and not a remote consequence of the judgment. The interest must also be substantial.

Id.

Additionally, we note that the Supreme Court in ***Louden Hill Farm, Inc. v. Milk Control Comm'n.***, 217 A.2d 735 (Pa. 1966), in discussing the ***Elliott*** case, explained that:

> [W]here a co-trustee sought to appeal from a court decree refusing to vacate a previous order finding the settlor unable to take care of his property and appointing a guardian of his estate, the co-trustee was held to have no standing. Quoting ***Musser's Estate***, 341 Pa. 1, 17 A.2d 411 (1941), it was said that neither the trustee's abstract interest in seeing the settlor's intent carried out "nor his concrete interest in his fees" would be sufficient to make him aggrieved. He must, for example, be surcharged, or be protecting the rights of those unable to act for themselves. In other words, to be aggrieved a party must have suffered the invasion of a legal right.

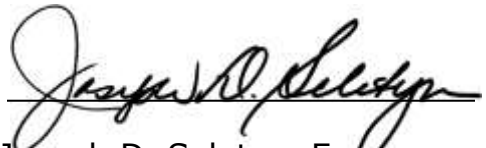
Louden Hill Farm, 217 A.2d at 737. ***See also In re Estate of Geniviva***, 675 A.2d 306, 310 (Pa. Super. 1995) (stating that to be aggrieved a party must have a direct interest in an immediate consequence of the judgment from which an appeal is taken).

Pursuant to these statements of the law, we agree with Ms. Ellett that Appellant does not have standing to pursue this appeal. Appellant is not a

party and did not commence the action; rather, Ms. Shaffer filed the motion for guardianship review. Moreover, the order appealed from seeks no relief from Appellant and does not harm or surcharge her. Therefore, we are compelled to conclude that Appellant is not aggrieved. She has no direct, substantial and immediate interest in the appeal. Accordingly, Appellant does not have standing. Thus, we quash the appeal.

Appeal quashed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/1/2016